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IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)
HOWARD A. ENGLE, M.D.,
et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.
_____/
Miami-Dade County CourthouseMiami, FloridaTuesday, 1:45 p.m.
January 19, 1999
TRIAL -VOLUME 181
The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.
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APPEARANCES:
STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
CLIFFORD DOUGLAS, ESQ.
On behalf of Plaintiffs
DECHERT PRICE & RHOADS
ROBERT C. HEIM, ESQ.
SEAN P. WAJERT, ESQ.
On behalf of Defendant Philip Morris
COLL DAVIDSON CARTER SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris
ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris
CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER
R. BENJAMINE REID, ESQ.
On behalf of Defendant R.J. Reynolds
JONES, DAY, REAVIS & POGUE
RICHARD M. KIRBY, ESQ.
On behalf of Defendant R.J. Reynolds
KING & SPALDING
MICHAEL RUSS, ESQ.
RICHARD A. SCHNEIDER, ESQ.
On behalf of Defendant Brown & Williamson
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
SHOOK HARDY & BACON
EDWARD A. MOSS, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard
DEBEVOISE & PLIMPTON
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ANNE COHEN, ESQ.

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JOSEPH R. MOODHE, ESQ.
On behalf of Defendant The Council for Tobacco Research
TAYLOR, JONOVIC, WHITE & GENDRONCOPYRIGHT 1998V-CALLHRIGHTSGRESERVED
(APPEARANCES -Continued)
GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard
MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
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On behalf of Defendants Liggett Group
and Brooke Group
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I N D E X
WITNESS PAGE
Deposition of Samuel Chilicote ..... 19970Deposition of Thomas Lauria
..... 20026
E X H I B I T S
PLAINTIFFS' OFFERED ADMITTED FOR ID
EXHIBITS PAGE PAGE PAGE
None
E X H I B I T S
DEFENDANTS' OFFERED ADMITTED FOR ID
EXHIBITS PAGE PAGE PAGE
None
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1 (Whereupon, the following proceedings were had:)
2 MR. ROSENBLATT: I hate to do this to you,
3 Judge, but you asked for it.
4 THE COURT: No, no. I only asked if you had
5 it.
6 MR. ROSENBLATT: We have here --this is what
7 I would intend to do for tomorrow: the depositions of
8 Ellen Merlo, Michael Rosenbaum, Martin Orlowsky, and
9 Ronald Stanley Fulford.
10 Fulford is the CEO of Liggett after Horrigan
11 left. So, let me hand these up to you.
12 THE COURT: Does anybody now take a 20-page
13 depo?
14 MR. ROSENBLATT: No. But in some of these,
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15 they're very little.
16 MS. LUTHER: Judge, with regard to Rosenbaum,
17 who is also --he's a Brooke person, and Fulford, we
18 just got additional designations on these, that I
19 haven't had a chance to look at, so I don't know if I
20 have objections to these designations.
21 THE COURT: Yes. Well, let's see what we're
22 talking about.
23 Rosenbaum and who else?
24 MS. LUTHER: Fulford.
25 THE COURT: Fulford?

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1 MS. LUTHER: Yes.
2 THE COURT: Fulford.
3 MS. LUTHER: I mean, they're not extensive,
4 but I would like at least an opportunity to get back to
5 the office and look at the stuff.
6 THE COURT: I'm not going to do it today,
7 that's for sure. It doesn't look like a whole bunch of
8 stuff in here.
9 MR. HEIM: Judge, are they color-coded, the
10 ones that were given to you?
11 THE COURT: Yes. It appears to be.
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12 Let me just double check. Yes. I've got an
13 orange line, a yellow line, blue line and green line,
14 so I guess there's something in there.
15 MR. HEIM: Because with Fulford, for example,
16 this morning we got some additional designations -17
THE COURT: Yes.
18 MR. HEIM: --as Kelly just said. So we're
19 all going to have to look at those tonight.
20 MR. NEWSOM: The same way with Orlowsky, Your
21 Honor. We had additional crossdesignations this
22 morning to which we'll have objections.
23 THE COURT: Crossdesignations?
24 MR. NEWSOM: Right. They did their
25 designations; we did our objections and

1 counterdesignations. They were supposed to do theirs
2 by the 22nd of June.
3 THE COURT: They being -4
MR. NEWSON: Plaintiffs. They did them this
5 morning. So they're several months late.
6 THE COURT: How am I going to determine which
7 ones are which, then? I mean, let's take Fulford, for
8 example. Okay. And I'm looking to see if there's any
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9 yellow here that has either not been objected to or
10 marked in any way, and I really haven't seen any.
11 Well, I'll tell you what. Since you don't
12 know about Fulford, and those are supposed to be some
13 designations --I'm not going to read Fulford tonight.
14 And you can go look at it and let me know what the
15 story is.
16 Let's talk about the others for a second.
17 MR. REID: I can shed some light on
18 Rosenbaum, Your Honor.
19 THE COURT: I'm sorry, sir?
20 MR. REID: I can shed some light on
21 Rosenbaum.
22 THE COURT: Rosenbaum. Okay.
23 MR. REID: Ms. Luther is going to be filing
24 some on her behalf, but I have some that I prepared and
25 I have a transcript for you that's marked up, so I can

1 hand that up.
2 THE COURT: Wait a minute. I'm not so sure.
3 MR. REID: Your copy doesn't appear to be

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4 marked up.
5 THE COURT: Mine is marked.
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6 MR. REID: Okay.
7 THE COURT: I don't know, when I look at
8 these --there's markings on it and there's objections
9 on there and there's also some blue and green markings.
10 It looks to me like -11
MR. REID: There were some additions, as you
12 know, today.
13 THE COURT: To Rosenbaum?
14 MR. REID: Yes, as I understand. This ought
15 to be coded, the one I'm handing to you and counsel
16 right now.
17 THE COURT: Okay.
18 MR. REID: You may be getting some additional
19 objections by Ms. Luther on Rosenbaum, but those are
20 the ones that I filed on behalf of RJ Reynolds.
21 THE COURT: It gets too confusing here.
22 MR. REID: I think it gets confusing because
23 there were subsequent --there were changes made
24 yesterday or whatever. So we had to go back to the
25 drawing board this morning.
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1 THE COURT: So if this one is okay, the one
2 that you just gave me -
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3 MS. LUTHER: Well, I still need to look at
4 that one, Judge.
5 THE COURT: You don't know if it's okay
6 because you haven't looked at it.
7 MS. LUTHER: Right. To tell you the truth, I
8 haven't had a chance to look at RJR's
9 counterdesignations.
10 MR. REID: No, because we just did them. But
11 you could get started by looking at those and I guess
12 we could add them, if you needed something to do.
13 THE COURT: Yes. Orlowsky.
14 MR. NEWSOM: I think Mr. Rosenblatt just gave
15 you a color-coded one. We have a color-coded one of
16 Orlowsky and we designated counterdesignations, marked
17 those in pink, so you can tell those from the other
18 designations.
19 And we will have objections to those. We
20 just got them this morning.
21 THE COURT: Well, I don't know what to do
22 with the stuff now. Now I'm not so sure. Usually I
23 get one, it's color-coded, and I just read it. Now you
24 give me two copies and you tell me neither of them is
25 complete.
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MS. LUTHER: That's part of the problem with
getting last-minute designations and last-minute notice
of what counsel wants to do.
THE COURT: Do I have a complete one, for
example, Merlo?
MR. HEIM: Judge, it would be helpful for me
if I knew as a start which Merlo transcript that is.

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There's two of them.
THE COURT: December 7th.
MR. HEIM: Of what?
THE COURT: '93.
MR. HEIM: All right.
MR. ROSENBLATT: That has to be first.
MR. HEIM: Right. That has to be the one
that was taken in the Broin case, I would gather.
THE COURT: Yes.
MR. HEIM: Now that I know that, I can check
on that. That may well be done.
Do you know, Chris?
Okay. And if there's --I gather that there
hasn't been any additional.
THE COURT: Let me ask you.
MR. HEIM: We're not dealing with that.
think that one is done.
THE COURT: Okay.

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1 MR. HEIM: And I have one here that has the
2 yellow, the orange and the green all highlighted on
3 theirs. It should be the same as yours, I would hope.
4 THE COURT: I also have one that has some
5 blue.
6 MR. HEIM: Blue?
7 THE COURT: Blue. And that threw me a little
8 bit. I mean, there's one or two little things.
9 MR. HEIM: Give me a page, Judge.
10 THE COURT: 31, for example, Line 4, 5 and 6.
11 Page 31. That's probably -12
MR. NEWSOM: Sometimes they mark green on top
13 of yellow.
14 THE COURT: No.
15 MR. HEIM: I don't have 4, 5 and 6.
16 THE COURT: You're talking now about -here.
17 It's somebody's counterdesignation, I'm sure, but I'm
18 not sure who uses blue.
19 I'll tell you, what we're going to find, as I
20 run through this, in my opinion, is we're going to find
21 the designations of the plaintiff, we're going to find
22 some counterdesignations already in there, and if there
23 are additional designations and additional
24 counterdesignations, as we run through it -25
MR. HEIM: Yes. I think there are probably
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1 so few we could probably on Merlo take them up on the
2 fly.
3 MR. NEWSOM: Same way with Orlowsky, Your
4 Honor. There are only five counterdesignations. We
5 haven't made objections to those yet, but we will by
6 tomorrow morning.
7 THE COURT: Whose counterdesignations are you
8 objecting to?
9 MR. NEWSOM: They made crossdesignations,
10 after we did our designations. The plaintiffs today
11 made further designations they wanted in response to

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12 our designations.
13 THE COURT: How am I supposed to know which
14 ones they are?
15 MR. NEWSOM: Well, I've marked on this one,
16 I've marked them in pink.
17 THE COURT: Okay. So plaintiffs' counter is
18 going to be in pink.
19 MR. NEWSOM: Then we object to some of those,
20 but we haven't filed them.
21 THE COURT: You object to those?
22 MR. NEWSOM: We'll do them later, in the
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23 morning.
24 THE COURT: Well, I don't understand where
25 you're going with this because I have a problem with
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1 Orlowsky. That's Merlo. I'm sorry.
2 MR. ROSENBLATT: Although, Judge, it might
3 make sense, since we do have things to do for the jury,
4 to kind of leave this for the end of the day.
5 THE COURT: Oh, yes. I'm not going to do it
6 now. I'm just trying to put it in order to see what
7 I'm doing here.
8 All right. What we're going to do now is
9 read a deposition of?
10 MR. ROSENBLATT: Samuel Chilicote.
11 THE COURT: Chilicote.
12 MR. ROSENBLATT: Okay. That's where we are
13 now. We've also completed Lauria.
14 THE COURT: Right.
15 MR. ROSENBLATT: So then the only other thing
16 is for you to give -17
THE COURT: Merryman.
18 MR. ROSENBLATT: --give us your rulings on
19 Merryman, which we will do after a break.
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20 MR. MARTINEZ: Your Honor, along those lines,
21 I'm not asking you to revise your rulings, because I
22 had objected before, but I want to make --I want the
23 record to be perfectly clear that in addition to
24 relevance, speculation and foundation, on Page 26, our
25 position is that -TAYLOR,
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1 THE COURT: Chilicote.
2 MR. MARTINEZ: --preemption is involved.
3 THE COURT: Chilicote.
4 MR. MARTINEZ: Yes, Your Honor.
5 THE COURT: Let me see.
6 MR. MARTINEZ: The first one. I have a few
7 on the other fellow, on Lauria. The question that
8 starts on Line 4.
9 THE COURT: Yes. I'm reading it.
10 No. That's not to me a preemption issue.
11 MR. MARTINEZ: I understand, Your Honor. I'm
12 not urging --I'd like you to --I'm not asking you to
13 revise your ruling. Could I just, for the record -14
THE COURT: If I revise my ruling, I would be
15 going down a path of error.
16 MR. MARTINEZ: Sir, I'm afraid it's too late

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17 for that in the preemption area.
18 Your Honor, just for the record, could I do
19 the Lauria one, just so we don't have to revisit it?
20 THE COURT: Yes.
21 MR. MARTINEZ: On Page 26 -22
THE COURT: Yes.
23 MR. MARTINEZ: --we believe that that
24 question also goes into the area of preemption: Are
25 you familiar with the warnings? What do the warnings

1 say? What do you think it says? Does it say --you
2 know, asking him to interpret the -3
THE COURT: No, no. I think what the
4 question is: There's a warning. Do you know the
5 actual wording of the warning? Does the warning that,
6 as you know it, say it can cause cancer or it does
7 cause cancer? He said he doesn't know which one it
8 was.
9 MR. MARTINEZ: But then if you look at the
10 question that starts on Line 18, it's very clear what
11 they're saying. Big difference from the standpoint of
12 the consumer. Wouldn't you think if the warning said
13 cigarette smoke may cause cancer, or it says it causes
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14 cancer.
15 THE COURT: Right.
16 MR. MARTINEZ: Clear implication. It should
17 say one or the other.
18 THE COURT: No, that's not the implication.
19 I disagree with you that that would rise to the level
20 of a preemptive issue.
21 MR. MARTINEZ: Yes, sir.
22 THE COURT: Although it touches on what the
23 warning does or does not say. But it's not in that
24 light, the context that we're talking about.
25 MR. MARTINEZ: Your Honor, on Line --Page 29

1 and 30, starting with "What is tar," and then going to
2 the bottom of Page 30, Line 18, because you've cut out
3 a middle section: Why do they talk about low tar?
4 It's implying that they should be advising people that
5 low tar does or does not mean anything. That, I
6 believe, is preempted also.
7 THE COURT: I can't buy that implication.
8 MR. MARTINEZ: I understand, Your Honor.
9 Your Honor, on Page 48, Line 24, I believe
10 that question specifically says, the man on the street,
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11 who keep hearing from you that it hasn't been proven,
12 how do they know; they aren't scientists or doctors,
13 either implying that what we are saying to them is
14 insufficient, although Congress has said that it is
15 sufficient just by putting on the labels.
16 THE COURT: That's closer than the other one.
17 MR. MARTINEZ: I got a closer one later,
18 but --this is the closest one so far, Judge.

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19 THE COURT: Yes. But even so, I'm not so
20 sure that relates to the advertising.
21 MR. MARTINEZ: I understand, Your Honor. I
22 just don't want it to go in without some objection.
23 THE COURT: Yes. You can have the objection.
24 MR. MARTINEZ: Your Honor, on Page 55, the
25 question is: I'm saying what is the reason that the
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1 Surgeon Generals have uniformly and unanimously come
2 out against tobacco? The answer is, in effect, that
3 they believe that the public needs to be informed about
4 it.
5 And then the question: And your job is to
6 shoot holes in that and say it hasn't been proven it is
7 a statistical linkage, there is no cause and effect?
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8 That is your accomplishment?
9 And the answer was no.
10 I think that clearly relates also to what the
11 public is advised or not advised.
12 THE COURT: Overruled.
13 MR. MARTINEZ: I understand.
14 Okay. Let's get a jury out here.
15 Chilicote first?
16 MR. ROSENBLATT: Yes, Judge.
17 MR. MARTINEZ: Judge, rather than to go
18 through this individually, the ones we did this
19 morning, can I just give them to you in writing so we
20 can discuss the ones we want to make sure that
21 preemption is specifically mentioned as opposed to just
22 our general objection? I'll just give you a list
23 rather than go through this exercise.
24 THE COURT: Does a leopard change its spots?
25 MR. MARTINEZ: Pardon me? I don't think a
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1 leopard starts changing its spots.
2 THE COURT: When do you change your spots?
3 MR. MARTINEZ: I like spots.
4 THE BAILIFF: Bringing in the jury.
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5 Jurors entering the courtroom.
6 (The jury entered the courtroom.)
7 THE COURT: Okay. Everybody is here. We're
8 ready to go.
9 Have a seat.
10 We are going to go through the deposition of
11 a Samuel Chilicote, or Chilicote.
12 Who is going to be the reader?
13 MR. ROSENBLATT: Mr. Douglas, Judge.
14 THE COURT: All right.
15 MR. ROSENBLATT: Mr. Chilicote's deposition
16 was taken in Washington, D.C., November 19, 1993. And
17 he spells his name C-H-I-L-C-O-T-E.
18 (The deposition of Samuel Chilicote was read
19 as follows:)
20 MR. ROSENBLATT: Page 4.
21 Q. Tell me your name and address, please, sir.
22 A. Sam Chilicote,
23 [DELETED]

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24 Q. You are the president of the Tobacco
25 Institute?
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1 A. Yes.
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2 Q. And for how long have you been the president
3 of the Tobacco Institute?
4 A. Since 1981.
5 MR. ROSENBLATT: And then we go to Page 9 -
-
6 well, I guess the last question on Page 8, Line 25.
7 Q. So what was the next employment?
8 A. Then I went back to work for two
9 organizations as their field representative. One was
10 called Licensed Beverage Industry, and the other was
11 the Distilled Spirits Institute. And I was a regional
12 person for those two organizations covering a region,
13 living and working out of Cheyenne, Wyoming.
14 Q. Were these state-wide groups, nation-wide
15 groups?
16 A. They are nation-wide organizations.
17 Q. What exactly are they? I seem to get an
18 impression from the name, but tell me what these
19 organizations were.
20 A. The Distilled Spirits Institute was the
21 organization that represented the distilleries. They
22 were in collecting brand, class and type information,
23 handle the governmental relations at the state level,
24 federal level.
25 It is a straight association. Represented
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the distilling interests, and Licensed Beverage
Industry was involved in trying to promote messages as
far as the Alcoholic Beverage Industry was concerned.
This was, I guess, more a public relations
arm for the distilleries; did a lot of work with
licensees and wholesalers, so I worked in that
capacity.
Q. So you were the field rep for both these
organizations?
A. Yes. They each took half my time, so to
speak.
Q. But there was obviously a connection between
the two organizations?
A. Both of them. The distilling industry at
that particular time had three groups that represented
them: Bourbon Institute, Licensed Beverage Industry
and the Distilled Spirits Institute. So they had
several trade groups representing them.
Q. Did you do a lot of traveling in that job?
A. Yes.
Q. All over the country, or a particular region?
A. In a particular region. My areas of
responsibility were the Dakotas, Nebraska, Wyoming,
Minnesota.
Q. Did you ever do anything beyond being a field
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representative for these organizations?
A. With those organizations, later in my career, I did other jobs for them.
Q. So what other jobs did you do for them, other than field rep?
A. Other than working in a field representative position, both organizations thought I worked out well for them, so they said either one of our organizations would like to have more of your time.
So they asked me to make a decision: If I wanted to work for the Licensed Beverage Industry or the Distilled Spirits Institute.
I, at that time, elected the Distilled Spirits Institute, so I was their regional representative covering basically the same area.
Later they asked that I come in to run their field division. They had organizations out. I guess they thought I did a good job at the job that I was doing, so I came in as their state director, living here in Washington, D.C.
Q. The state director. Which state?
A. I had responsibility for all of the states with field people, representatives like myself then
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underneath me.
Q. As a practical matter, what did you do in

that job on a day-to-day basis, primarily?
A. As the state director?
Q. Yes.
A. Tried to keep abreast of all of the legislative and regulatory matters that were happening in the state legislature relative to distilled spirits.
Also, as I said earlier, one of the functions of the organization was the collection of brand, class and type information; make sure there was the flow of that information so that these reports could be made to the distilleries, the members of the organization.
Q. Who are the members of the organization, the Distilled Spirits Institute?
A. Most of the distilleries were American distilleries. It was an organization that represented the American distilling interests.
Q. Would that include the makers of scotch and bourbon?
A. The whiskey end of the business. There are many companies that would, for example, have scotches
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or they would have wines, and then they had their own production. Some of them were rectifiers, where they would buy alcohol from other places and rectify it and do the bottling. So that comprised the membership.
Q. About how many members were there of the

Distilled Spirits Institute?
A. I can't remember, but I would say probably 15 to 20, in that category.

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4 MR. ROSENBLATT: Then we go to the next page,
5 Line 3.
6 Q. So for how long a period of time were you
7 involved with the distilled spirits industry?
8 A. 14 years.
9 Q. Have you told me pretty much every position
10 you occupied?
11 A. No. Then I was a state director. Then later
12 I became the executive director of the Distilled
13 Spirits Institute.
14 Q. That was in what year, that you became
15 executive director? If you are off a year or two, it
16 is not going to be a big deal. So give me your -
-
17 A. I would say it was within the '70s, early
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18 '70s. Then from there the distilling interests decided
19 they wanted to have an amalgamation of the three
20 different trade groups that represented the Distilled
21 Spirits Institute, Licensed Beverage Industry and
22 Bourbon Institute.
23 Had an amalgamation of those three trade
24 organizations, based upon a consultant's evaluation
25 that they thought they would provide better

1 representation on the part of the companies.
2 MR. MARTINEZ: Your Honor, I don't mean to be
3 picky, but that's not the word. It's not "three trade
4 organizations."
5 THE COURT: Let me see.
6 MR. MARTINEZ: Line 21.
7 THE COURT: Line what?
8 MR. MARTINEZ: 21. No big deal.
9 THE COURT: Amalgamation.
10 MR. MARTINEZ: I want to be sure we read the
11 words that are there. The word that was read was
12 "organizations."
13 THE COURT: It says, "Had amalgamation of
14 those three trade associations."
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15 MR. MARTINEZ: But the word that was said
16 from the witness stand was "organizations." I just
17 want -18
THE COURT: Associations.
19 MR. MARTINEZ: I want to be sure we read the
20 right word.
21 THE COURT: Associations.
22 A. I then became president of the amalgamation.
23 That new organization was called Distilled Spirits
24 Council.
25 Q. When was that formed, what year, the

1 Distilled Spirits Council?
2 A. About '77, '78, in there.
3 Q. So you were the first president of that new
4 entity?
5 A. Yes.
6 Q. And you were the number-one guy?
7 A. Yes, sir.

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8 Q. Who was the number-two person?
9 A. Well, I had a field division. I had a legal
10 division. There was no number-two person, as such. It
11 was sort of a divisional structure.
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12 John McKaren was in charge of my legal.
13 Dr. Bill Pendergas. There were some changes in
14 personnel, obviously, but the last, Dr. Pendergas was
15 in charge of my Federal regulations.
16 Q. What --what kind of doctor was he, M.D. or
17 Ph.D?
18 A. He was an education Ph.D.
19 Q. So you were president of the Distilled
20 Spirits Council from when to when?
21 A. From '77 until '81, or when I joined the
22 Tobacco Institute.
23 MR. ROSENBLATT: We go to Line 7 on Page 15.
24 Q. So, in other words, when you went with the
25 Tobacco Institute --I'll refer to it as TI -
-

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1 A. Right.
2 Q. When you went with TI, you, at that time,
3 were still president of the Distilled Spirits Council?
4 A. Yes.
5 Q. Why --why did you leave? Why did you make
6 that switch in 1981?
7 A. They had a search firm which was Heidrich
8 Struggals, the name of the search firm who was doing a
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9 search for the cigarette manufacturers. They contacted
10 me and wanted me to interview for the position, and I
11 did interview for the position.
12 Q. Did that contact come from out of the blue,
13 or had there been earlier feelers?
14 A. Completely out of the blue.
15 Q. No expression of interest by you?
16 A. No. I was perfectly satisfied in the job I
17 had, and I enjoyed representing the distilleries very
18 much.
19 Q. Prior to the time you interviewed for the job
20 with TI, had you had any connection whatsoever with the
21 tobacco industry?
22 A. No, sir.
23 Q. Who interviewed you for TI?
24 A. The guy in charge of the search was Richard
25 McFarland, Dick McFarland. That is who was with

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1 Heidrich Struggals, the person I talked to.
2 Q. Who did you actually meet at TI? Did anyone
3 from TI interview you?
4 A. As we moved through the interviewing process,
5 I talked with Horace Kornegay, who was then the
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6 president of the Tobacco Institute, and he gave me an
7 overview of the Tobacco Institute.
8 After the search started proceeding, I met
9 with some of the executive committee members of the

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10 Tobacco Institute as part of the interviewing process.
11 Q. You met with some of the presidents and CEOs,
12 for example, of Philip Morris, RJ Reynolds, those
13 people?
14 A. Yes.
15 Q. Did you meet with the presidents and CEOs of
16 all of the major companies before you actually took the
17 position?
18 A. Yes.
19 Q. So is it fair -20
A. The head of the company or his member on the
21 executive committee. We have two people from each
22 company on the executive committee.
23 It would have been one or both of them,
24 depending upon their availability.
25 Q. The executive committee of TI?

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1 A. Yes.
2 Q. How long did the process take, the
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3 interviewing process take?
4 A. The interviewing process didn't take too
5 long. It was like a month or two. As far as myself
6 was concerned, it was time to think it over, to think
7 about if this was the right career move or not, the
8 right career move. I was deliberating over it for
9 several months.
10 Q. Obviously, we know you took the job. So what
11 was the primary motivating factor from your standpoint
12 as to why you left the job you were happy with and
13 earning good money to take another job in a new
14 industry?
15 A. Primarily career development. I saw this as
16 an opportunity to run two trade groups for two
17 different industries, which I thought in terms of
18 resume enhancing, experience and this kind of thing,
19 because I thought it would be in my best interests.
20 I could have stayed with the distilling
21 interests until I retired, so to speak, but I was a
22 young man, relatively young to have had that position.
23 And I thought also it was the challenge of
24 working with a new problems --new ideas, because I had
25 been with the other group for quite a period of time,

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and I wasn't quite sure I wanted to spend another 20
years doing the same thing, same people. So that was
the motivating factor.
Q. Did you have a philosophy about smoking when
you were considering the new job?
A.
Not really.
Q.
Are you a smoker?
A. Yes. I smoke a pipe. Enjoy a cigar after a
meal.
Q.
Have you ever been a cigarette smoker?
A.

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No, sir.
Q.
Never?
A.
Never.
MR. ROSENBLATT: Go to Page 20, Line 6.
Q. So obviously at some point you said to
yourself: I'm going to leave the distilling industry
and I'm going to go with TI?
A.
Yes.
Q.
I assume you made more money in the new job?
A.
It was sort of a push. I can't remember. I
think it was 180.
MR. MARTINEZ: Excuse me.
MR. ROSENBLATT: No, no.
MR. MARTINEZ: I don't think that --that was
deleted.
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1 MR. ROSENBLATT: Yes.
2 THE COURT: "Sort of a push," where you put
3 your finger.
4 MR. DOUGLAS: Right here.
5 MR. MARTINEZ: In that regard, Your Honor -
-
6 THE COURT: "I can't remember. About the
7 same amount of money." Just eliminate that whole
8 thing.
9 A. I can't remember.
10 THE COURT: "I can't remember."
11 A. About the same amount of money.
12 THE COURT: "About the same amount of money."
13 MR. ROSENBLATT: Page 20, Line 5.
14 Q. Who evaluates the job performance?
15 A. The executive committee, members of the
16 executive committee.
17 Q. The presidents and CEO of the member
18 companies?
19 A. Yes, sir. They will have a discussion.
20 Q. Do you have a written contract?
21 A. Yes, sir, I do.
22 MR. ROSENBLATT: We go to Line 25 on Page 21.
23 Q. Why was Kornegay leaving? Why did they need
24 a new president?
25 A. Horace had served in Congress and then joined
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1 the Tobacco Institute. He was a congressman from North
2 Carolina, just getting close to retirement.
3 I think the cigarette manufacturers, staging
4 for his eventual retirement, wanted to have me come
5 aboard to see if I could operate as the head of their
6 trade association.
7 Q. Was --was it your understanding that that
8 was a voluntary move on Mr. Kornegay's part?
9 A. Oh, yes.

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10 Q. How long had he been president before you
11 took over?
12 A. Probably --this is really a guess --ten
13 years or so.
14 Q. Do you know who was president before him?
15 A. Yes, sir.
16 Q. And who was that?
17 A. It was a fellow who was a former governor and
18 senator from the State of Kentucky. His name was Earl
19 Clements, Senator Earl Clements.
20 Q. He was a U.S. Senator from Kentucky?
21 A. Yes.
22 Q. Did you know him?
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23 A. Yes. I didn't know him with --he wasn't the
24 personal kind of relationship. Working for the
25 distilleries, everyone knew who Senator Clements was,

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1 particularly being from Kentucky, the bourbon state.
2 Q. And the tobacco state?
3 A. And the tobacco state. I knew who Senator
4 Clements was.
5 Q. Clements is a Republican or Democrat?
6 A. He was a Democrat.
7 Q. How long did Kornegay serve in Congress, do
8 you know?
9 A. Several terms. I would say probably six to
10 eight terms. I'm really not sure.
11 Q. Do you know if he was defeated in an election
12 or he retired from Congress?
13 A. Retired.
14 Q. Since you took over as president of TI, do
15 you have much contact with Mr. Kornegay?
16 A. We have been friends, and I will see him
17 periodically, once a month or so --he is down at
18 Greensboro --maybe not even that often. He and his
19 wife live in Greensboro now.
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20 Q. He is a lawyer? Does he practice in
21 Greensboro?
22 A. Yes, sir.
23 Q. Does he still represent tobacco interests as
24 an attorney?
25 A. He represents American Tobacco, to keep them

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1 primarily informed on legislative affairs.
2 Q. As president of TI, do you go into the
3 office? Do you have regular hours?
4 A. Very regular.
5 Q. Unfortunately?
6 A. Yes, sir.
7 Q. Like 9 to 5?
8 A. A little longer than that.
9 Q. You spend most of your time in the office, as
10 opposed to on the road?
11 A. Yes. Most of the time. Like any --you have
12 industry functions, meetings you go to. I do a fair
13 amount of traveling.
14 Q. When --when you were in the office, what is

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15 an average day? What do you spend most of your time
16 doing?
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17 A. Processing paper, like everybody.
18 Q. What kind of paper?
19 A. Well, reading reports, looking at clippings,
20 answering mail. Just performing the usual
21 administrative functions that any chief executive
22 officer would be involved in.
23 Q. For example, do you personally get involved
24 with responding to media inquiries?
25 A. No. I'm fortunate in having spokespersons
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1 that do that. We have a media relations division.
2 Q. And they take care of that?
3 A. Yes.
4 Q. Have you established a policy as to how your
5 media relations people respond to media inquiries?
6 A. No. They are trained in that area. They
7 state the industry position when asked.
8 Q. What is the industry position, for example,
9 if someone calls up and says: I got a package of
10 cigarettes in front of me. The package says:
11 Cigarette smoking causes lung cancer. Does it?
12 A. They would --the response would be, I would
13 think --I don't know, but I would think they would be
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14 consistent with the industry position and state in
15 however --as individuals, there is not a pat response.
16 Q. You mean it is really that free-form?
17 A. Well, it has parameters, like any state. If
18 you were to call me up and ask me: What about that, I
19 wouldn't be reading from a piece of paper, I don't
20 think. I would just be responding based upon the
21 position that the industry has.
22 Q. What is the industry position on that
23 question? A caller calls from the New York Times or a
24 member of the public, and says: Hey, I'm looking at a
25 package of Marlboros, and it says: Surgeon Generals
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1 Warning: Cigarette smoking causes lung cancer. Does
2 it? What is the industry position answer to that
3 question?
4 A. We really don't get many calls along that
5 line, where somebody would call up, I don't think. But
6 the industry's position is that no one really knows
7 what causes cancer. There is a risk associated with
8 it. They don't deny that. That is how I would
9 respond. I don't know how they would respond.
10 Q. Does it happen occasionally where one of your
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11 people from the Tobacco Institute comes in and says to
12 you: You know, I got this inquiry, this newspaper, and
13 it is a little unusual. How do you think I should
14 handle it? Or are they almost 100 percent autonomous?
15 A. They would come in and say: I got an unusual
16 request, whatever it may be, making this assumption.

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17 They would say: This is how I think we should respond,
18 and if it is consistent with the tobacco industry's
19 position, they would respond that way. If it was
20 something really off the wall, unusual, they wouldn't
21 just go out and respond. They know our position on all
22 matters. Most of them are sort of like a rope. Same
23 things keep coming up.
24 Q. And you keep saying the same things?
25 A. We do have a consistent message.

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1 Q. It has really been consistent from '81, when
2 you became president, up until today, or has it
3 changed?
4 A. No, it hasn't changed.
5 Q. What is the industry position on passive
6 smoke? Someone calls and says: I'm not a smoker, but
7 in my work environment, people are allowed to smoke.
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8 It bothers me, but, more importantly than that, I have
9 read the EPA report. I'm worried about my health. Is
10 it a danger?
11 A. We do not feel that passive smoking is -12
that there is a risk associated with it. As you know,
13 there have been studies that have pointed out
14 statistical associations.
15 There have been many studies, in fact more
16 studies on the other side, so --say there isn't any
17 risk. But we don't form an opinion relative to the
18 risk. We just state our knowledge.
19 Q. Is the industry position relative to
20 environmental tobacco smoke, that it poses no danger?
21 A. That's correct.
22 Q. Are you aware of any scientific or medical
23 report that says that?
24 A. That there is no danger?
25 Q. That there is no danger.

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1 A. I think there has been a big debate on this,
2 as you know. Scientists have said there is a risk
3 associated. Others have said it is insignificant or
4 they don't know.
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5 It is really sort of an unanswered question.
6 Q. Is it your impression or your understanding
7 that medical people outside the tobacco industry have
8 written articles that have been published in
9 respectable medical journals to the effect that
10 environmental tobacco smoke is no problem to health?
11 A. Yes. I think most of the studies that have
12 been done to date on the environmental tobacco issue in
13 the United States take that position, that it is not
a
14 problem.
15 Q. That it is not a problem?
16 A. Yes.
17 MR. ROSENBLATT: Going to Line 12 on Page 29.
18 Q. You don't --you don't have any medical
19 background yourself?
20 A. No, sir.

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21 Q. But, for example, when technical subjects
22 come up or a report is issued by the Surgeon General,
23 by the EPA, by some other organization, do you have
24 with TI a technical person, a physician, someone with
25 scientific background that you can say: Hey, explain

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1 this to me in normal, everyday language?
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2 A. No. We don't have any technical people on
3 the staff.
4 Q. If you had a technical question --I know you
5 haven't read the EPA report, but let's say you did and
6 you came to a paragraph you didn't understand and you
7 wanted to understand it. Is there a guy at Philip
8 Morris or RJ Reynolds, anywhere, a doctor you would
9 call?
10 A. I wouldn't call; my staff would. If they had
11 a question concerning an industry position, they would
12 send it to the companies who do have doctors and
13 scientists, their organizations, and they would make
14 the interpretation. They would tell us how they felt
15 about the report.
16 Q. In terms of fielding inquiries, either from
17 the media or from the general public --and I assume
18 that your people will accept calls from the general
19 public and answer them to the best of their ability?
20 A. Yes. They do accept calls from the general
21 public. They don't get that number of calls.
22 Q. They don't get that many?
23 A. No. I don't think so.
24 MR. ROSENBLATT: Now we go to Page 33, Line
25 6.

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Q. If I said to you, for example, or there was
an order of the court, you got a call from your lawyer
saying: We want to see every press release ever put
out by TI since you became president, my initial
question is, do those records exist?
A. I don't know. I'm sure we have most of them,
but I don't know how long they go back.
Q. And if you wanted to find out the answer to
that question, would you call your secretary or who?
A. I would call Brennan Dawson, the head of the
media relations division, and say: How far do our
press releases go back? And Debbie would do the same
thing. She would refer the caller to media relations.
Q. Can you give me an average of how many
letters you send out a week or a day to various people
or organizations?
A. On an average, say, 10 to 20, probably.
Q. 10 to 20 a week?
A. A day.
Q. Generally, what kind of letters? To who?
A. Would you participate in something like this,
you know, for meetings, be about the range.
Q. How often does the executive committee of
Tobacco Institute meet?
A. Four to five times a year. About every other

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1 month.
2 Q. Where are the meetings held, usually?
3 A. Either in Washington or New York. Most of it
4 in Washington.
5 Q. Who attends those meetings?
6 A. The representatives of major cigarette
7 manufacturers that belong to the Tobacco Institute.
8 Q. Who attends from TI, other than, I assume,
9 you do?
10 A. I do.
11 Q. Other than you?
12 A. My division heads will attend and make
13 reports on their respective divisions.
14 Q. Is that the usual agenda, that your division
15 heads will appear at the executive committee meeting
16 and give a report?
17 A. That's correct.
18 Q. What is usually the purpose of the executive
19 committee meetings?
20 A. To have an understanding of what we are doing
21 as a trade association, like any other trade group, to
22 say this is what we are doing, this is what is
23 happening, activity report.
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24 MR. ROSENBLATT: We go to Line 23 on Page 35.
25 Q. What is the Council for Tobacco Research?

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1 A. The Council for Tobacco Research is a
2 research organization, I guess, that looks into the
3 scientific matters concerning cancer and other things.
4 Q. Do you know that for a fact, or is that
5 something you simply assume by their name?
6 A. That is just an assumption. I don't know for
7 a fact.
8 Q. Have you ever had any occasion to read any
9 literature coming out of the Council for Tobacco
10 Research?
11 A. No, sir.
12 Q. So when you say they are a research group,
13 you don't really know what kind of research they do?
14 A. No, sir.
15 Q. Do you know Dr. James Glenn?
16 A. No, sir.
17 Q. Is it fair to say that TI is a lobbying group
18 for the tobacco industry?
19 A. Yes. We are their advocate before
20 governmental agencies.
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21 MR. MARTINEZ: 41.
22 MR. ROSENBLATT: Go to Page 41, Line 7.
23 Q. Obviously, there is a certain amount of
24 reading in connection with your job. What do you read
25 mostly? I mean, do you read press reports about the

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1 tobacco industry?
2 A. My staff will prepare press clips for me that
3 every day just sort of give me a feel for what is
4 happening. Like anyone, I read the Wall Street
5 Journal, New York Times, Washington Post, sort of get a
6 feel for what is happening generally. USA Today.
7 I will read legislative reports, what is
8 being introduced in a particular state, in Congress,
9 regulatory. That would be the typical things I would
10 read.
11 MR. ROSENBLATT: Page 43, Line 3.
12 Q. Could you give me a history of the Tobacco
13 Institute, including any predecessor association that
14 acted as the tobacco trade association?
15 A. The Tobacco Institute was formed in 1958. I
16 don't know if there was any other association before
17 that time.
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18 Q. And I take it, it is your understanding that
19 pretty much from 1958 until the present time, TI has
20 performed essentially the same functions?
21 A. Yes. Like any group, you get more involved.
22 When they started out originally, for example, I don't
23 think they had a field division.
24 They may have had a person in it, but you get
25 the functions that are added and deleted. I'm going

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1 through that right now.
2 Q. Do you know what was the Tobacco Industry
3 Research Committee, which I believe was formed about
4 1954? Does that ring a bell to you, at all?
5 A. No, sir.
6 Q. You know nothing about it?
7 A. Absolutely nothing.
8 Q. Does TI put out any kind of publication, even
9 informal, such as a brochure or a newsletter, either
10 directed toward the member companies or to anyone else?
11 A. Yes, we do. I'll have sort of a legislative
12 update sent to my member companies, the executive
13 committee every Friday. The state division, their
14 counterparts, will have a legislative update at the
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15 state level.
16 MR. ROSENBLATT: What's the next page?
17 53. Page 53, Line 16.
18 Q. What was the budget of the Tobacco Institute
19 before the recent reorganization, the total budget?
20 A. $38 million.
21 Q. And out of the $38 million, how much went for
22 salaries?
23 A. Probably --my division, I will say 25 or 30
24 percent. Probably be about 30 percent by the time you
25 figure benefits, the other employment costs.

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1 Q. What did the other millions go for, the
2 two-thirds, approximately?
3 A. The rest, the administration division, which
4 would be computers, overhead, rent, the usual things
5 that you have in your business. I think that division

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6 was about $6 million. Our field operation was $12
7 million. Our Federal about the same. Our public
8 affairs about $13 million. That is sort of a mix.
9 MR. ROSENBLATT: Line 16 on Page 54.
10 Q. Out of the budget, pre-reorganization, did
11 any of that money go for political contributions?
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12 A. No. We would have a PAC. We would make
13 honorarium contributions. But that would be it. And
14 in those states where it's legal to make a corporate
15 contribution, it would be done there.
16 I think there is about 20 states that have
17 that.
18 MR. ROSENBLATT: Page 55, Line 17.
19 Q. Who is the head of the PAC?
20 A. The PAC Committee was a fellow named Bob
21 Lewis, was the head of my Federal relations division.
22 And Ralph Vinovitch would be on the PAC Committee. I'm
23 not sure. Maybe another person on the PAC.
24 It would be people in my Federal relations
25 division.

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1 Q. But, of course, Lewis and Vinovitch, the
2 people that run the PAC, are employees of TI?
3 A. Yes, sir.
4 Q. As a practical matter, does the PAC have an
5 office separate and apart from the TI office?
6 A. No.
7 Q. It is really within the framework of TI?
8 A. Yes, sir.
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9 MR. ROSENBLATT: We go to Page 57, Line 2.
10 Q. Who does TI's PAC make most of its
11 contributions to, as a practical matter? Members of
12 Congress, to senators?
13 A. It would be members of Congress. We do not
14 have a state PAC. We make no political contributions
15 to the state. It is all Federal level.
16 Q. It is 100 percent at the Federal level?
17 A. Yes, sir.
18 Q. I may not be pronouncing his name correctly,
19 the former congressman who is now with TI --Whitley,
20 is that his name?
21 A. Now with TI?
22 Q. Yes.
23 A. Whitley.
24 Q. My understanding is he has an office at TI?
25 A. Yes.

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1 Q. What does he do for you?
2 A. He is our legislative representative covering
3 Congress. He is a consultant hired for that purpose.
4 Q. Is he paid a salary by TI?
5 A. He is on a consulting contract with us. He
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6 is not a salaried employee. He is not an employee as
7 such. He gets a contract.
8 MR. ROSENBLATT: Line 9 on Page 58.

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9 Q. Now, he was a member of the House of
10 Representatives from what state?
11 A. North Carolina.
12 Q. And for how long, about?
13 A. Say, ten years. I'm not sure.
14 Q. Do you have frequent contact with him?
15 A. Yes. I see him on a weekly basis.
16 Q. Is he the Tobacco Institute's designated
17 person to testify before congressional committees?
18 A. He has testified on our behalf. Depending on
19 the subject matter, maybe other people would testify.
20 Q. Would you figure, though, that he has
21 testified before committees of Congress more frequently
22 than any other member of TI?
23 A. During my tenure, yes, that would be the
24 case.
25 Q. How long has he been with the Tobacco
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1 Institute?
2 A. I would estimate six years.
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3 Q. Is TI his only client?
4 A. Yes.
5 Q. How would you characterize him? You say he's
6 not exactly an employee, but he has an office at TI.
7 You are his only client. How do you characterize this?
8 A. It is strictly as a consultant. Mr. Whitley
9 is in his late 60s, or maybe middle 60s. He is not
10 interested in building, I don't think, building a big
11 business at that stage in his life. Though, he is
12 certainly good, a very respected man.
13 Q. What is his area of expertise from TI's
14 standpoint?
15 A. Having been a member of the congressional
16 staff and then having been a congressman, he really
17 understands, from a staff point of view and also as a
18 member of Congress, what they expect.
19 Q. How to be an effective --how to be an
20 effective witness, that type of thing?
21 A. That's right.
22 Q. He knows the ins and outs of the political
23 system, obviously?
24 A. Yes.
25 Q. And that's really his value to TI?
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A. Yes.
Q. How often do you personally have occasion to
meet with or interact with Federal political officials,
the House, the Senate?
A. I'll meet him or see him at a social
function, or something like that, on a weekly basis.
Q. Are you social friends with any member of
Congress?
A. Yes, sir.
Q. Who would you consider to be your closest
friend in Congress? And if there are a few that are
about the same level of closeness, tell me.
A. They are all about the same. Washington,

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have you met my best new friend?
Q. I have heard that.
Who are some of your best new friends or old friends?
A. Old friends, people from my own home state, Wyoming. Congressman from Michigan I'll play golf with from time to time. See a lot of them at different events, things like that.
Q. Do you play golf with any U.S. Senator?
A. Yes, I have.
Q. Who?
A. Senator Don Nichols from Oklahoma, Senator
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Burns from Montana, Senator Wallop from Wyoming. That is a few.
MR. ROSENBLATT: Page 66, Line 20.
Q. I would like you to go through each division of TI and tell me the top person, top two or three people in each division.
A. Under my present organization today?
Q. Before the reorganization.
A. Before the reorganization.
My administrative officer is Bill Adams, senior vice president in charge of that. He is in that position now, so it is before and after.
In the Federal relations division, it was Bob Lewis that was the senior vice president in charge of that. Charlie Whitley will be coordinating that activity.
State relations, it was Curt Mulgreen, and that is before and after.
In public affairs, it is Susan Stunts, before, and now after it is Walter Whitson.
Q. Susan Stunts was let go?
A. Yes. And Brennan Dawson before and after.
Those are the top people.
Q. And that covers all of the divisions?
A. Yes.
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Q. What division, if any, has been done away with since the reorganization?
A. No division has been done away with.
Departments within the division have been done away with.
MR. ROSENBLATT: Page 68, Line 12.
Q. You think it is fair to say that the main purpose of TI is to fight legislation, either at the Federal or state levels, which the industry perceives as being harmful to it as an industry, such as smoking bans?
A. Well, one of our functions at TI is obviously legislative, like taxes. It is very important to us. Advertising bans, state and Federal smoking bans.
Q. Well, TI will fight and oppose any bans, any proposed ban at any level, where, for example, legislation is proposed to ban smoking in restaurants,

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19 to ban smoking in public buildings. That is the kind
20 of thing that TI will always oppose, isn't it?
21 A. Complete bans, we would oppose it. But we do
22 try to offer compromises and work it out so both the
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23 smokers and the nonsmokers are accommodated.
24 Q. What was your role in the ban on --the
25 smoking ban on airlines?
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1 A. The Tobacco Institute's role?
2 Q. Yes.
3 A. The Tobacco Institute presented testimony
4 before --was it the CAB at that time? I can't
5 remember who was in charge. We would have given the
6 position of the tobacco industry on the smoking ban.
7 MR. ROSENBLATT: Page 70, Line 7.
8 Q. But, I mean, specifically, my question, you
9 would accept the proposition that most Americans
10 believe cigarette smoking causes cancer and other
11 diseases?
12 A. Yes.
13 Q. The tobacco industry's position is, you know:
14 We don't know if it does.
15 A. That's correct.
16 Q. And the tobacco industry's position with
17 respect to environmental tobacco smoke is that
18 environmental tobacco smoke is not a problem, is not a
19 health problem?
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20 A. That is what we feel, yes.
21 MR. MARTINEZ: 73, Line 25.
22 MR. ROSENBLATT: You heard that. Page 73,
23 Line 25.
24 Q. Have you met Clinton, President Clinton?
25 A. Yes, sir.
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1 Q. In what context?
2 A. When he was governor, I knew him then.
3 Q. How well did you know him?
4 A. Would go to a democratic meeting which he
5 would be a speaker, compliment him on his presentation,
6 yes.
7 Q. Have you ever been in a social context with
8 him, have dinner with him, where you were at the same
9 table, in the same room?
10 A. Yes, sir.
11 Q. You have been in a situation where you had
12 dinner with him at the same table?
13 A. Well, stand-up hors d'oeuvres, more grazing.
14 Q. You got to talk to him?
15 A. Right.
16 MR. ROSENBLATT: Page 75, Line 1.
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17 Q. How about --how about any other president?
18 The same question. Did you know Bush?
19 A. Yes. I knew Bush.
20 Q. In what context?
21 A. Same context. Part of my job, I guess, here

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22 in Washington is to know different people.
23 Q. Were you ever one-on-one with Bush in a
24 conversation?
25 A. Yes.
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1 Q. And where was that? What was the context of
2 that one-on-one situation?
3 A. His daughter's wedding would be one.
4 Q. You were invited?
5 A. Yes. Going through a receiving line: How
6 are you doing, Mr. President, is one-on-one.
7 MR. ROSENBLATT: Never happened to me.
8 Q. It seems --it seems to me, to be invited to
9 his daughter's wedding, there would have been some
10 background for that invitation. Maybe not.
11 A. Well, I knew the groom who was marrying his
12 daughter.
13 Q. You were closer to that side of the family?
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14 A. Yes.
15 Q. What is his name, the young man who married
16 Bush's daughter?
17 A. Bobby Cook.
18 Q. Where did you know him from?
19 A. I knew him when I was a kid, the
20 neighborhood. Knew his father and mother.
21 Q. Any other social occasions with Bush?
22 A. Receptions.
23 Q. How about Reagan or Carter?
24 A. Both Reagan and Carter. Social functions
25 with them.
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1 Q. Ever one-on-one with them?
2 A. The same type of one-on-ones I talked about.
3 Social. Say how are you doing? You are doing a great
4 job. Regular schmoozing, I guess.
5 Q. Have you ever had any relatives or family
6 friends who died of lung cancer?
7 A. No.
8 Q. Have you ever had an employee, in all of the
9 years you've been president of TI, that told you
10 something like this: I am not comfortable with the
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11 tobacco industry's position on smoking and disease. I
12 believe smoking causes cancer?
13 A. No.
14 Q. Are all staff members of TI required to adopt
15 the tobacco industry's positions which you have already
16 expressed?
17 A. No requirement. I'm not sure I understand
18 the question.
19 Q. Well, I assume that you would fire a person
20 who dealt with the public or dealt with the media and
21 said, you know: Look, I'm doing a job here, but I
22 really believe that cigarette smoking does cause
23 cancer. That person would not work for TI very long,
24 would he or she?
25 A. Well, I have never asked their personal
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1 opinion. If they were not willing to be an advocate
2 for the position, obviously -
-
3 Q. They would be gone?
4 A. --they would be gone.
5 Q. Sure.
6 Are you aware of any medical doctor or
7 scientist, who has no connection with the tobacco
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8 industry, who has, within the last seven or eight
9 years, publicly stated that he or she does not believe
10 that smoking causes cancer?
11 A. I'm not --I'm not personally aware. I have
12 read congressional testimony and things like that.
13 Do I remember specifically -14
MR. ROSENBLATT: No. No. I think that's it.
15 Stop there.
16 Okay. And then we go to Page 78, Line 18.
17 Q. If a prominent physician like a lung
18 specialist, no connection with the tobacco industry,
19 said tomorrow morning --adopted the tobacco industry's
20 position, that would obviously be great news for the
21 tobacco industry. You would quote that guy constantly?
22 A. There have been physicians that have made
23 those statements before publicly, at Congress, for
24 example, and it didn't even cause a ripple in terms of
25 being picked up by the press. Those statements have

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1 been made in the past.
2 Q. Can you name me one physician or scientist in
3 the last five years, unconnected to the tobacco
4 industry, who has publicly spouted the tobacco
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5 industry's line?
6 A. I cannot name anybody in the last five years.
7 I think there have been people who have said this.
8 Q. How about in the last ten years, can you name
9 an individual?
10 A. Not specifically by name, no, sir.
11 Q. Is cigarette smoking addictive?
12 A. No. I don't think they are addictive, no.
13 Q. Would you concede that there are a certain
14 number of people who are smokers who would dearly love
15 to stop smoking, but are unable to?
16 A. I don't know. I think a lot of people say a
17 lot of things. It is sort of an overworked term: I'm
18 a videoholic or I'm a chocoholic.
19 Q. So you're telling me, it is really your
20 belief that anyone who really wants to quit smoking,
21 whether they have been smoking two packs a day for 30
22 years or one pack a day for ten years, if they make the
23 decision to stop smoking, they can do it on their own
24 without any help, and it is not addictive?
25 A. Yes. As I said, my wife has quit. I know a

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1 lot of people that quit.
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2 Q. And you have never known anyone who I
3 characterized before who was a smoker, wants to quit,
4 hates the habit but can't? You never heard of anyone
5 like that?
6 A. You hear people say different reasons. I
7 guess it would have to be a psychologist or somebody
8 that would have to comment on why they continue to use
9 a product.
10 MR. ROSENBLATT: We go to Line 25 on Page 80.
11 Q. Considering your background in the liquor
12 industry, you would agree that alcoholism is an entity
13 that some people cannot conquer on their own?
14 A. That's true. There are some people that
15 cannot. There is intervention by medical authorities.
16 Q. So you will concede and agree that alcohol
17 can be an addiction?
18 A. I'm not a --I don't know what constitutes
19 addiction.
20 MR. ROSENBLATT: Page 82, Line 2.
21 Q. What mechanism do you have for determining
22 whether your media representative people are doing
a
23 good job, responding to media inquiries and inquiries
24 from the public in a manner you would consider
25 satisfactory?

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A. When I read what they had to say in the
press, if I thought they explained the industry's
position, if I saw someone on Nightline, I would have a
take-away myself, if I thought they did a good job
advocating our position.
There is not anything formal or anything like
that, if I understand your question. There is nothing
formal.
MR. ROSENBLATT: Page 83, Line 1.
Q. Have you ever read a Surgeon General's
Report?
A.
No.
Q.
How many times did you meet with your lawyers
in preparation for today's deposition, assuming you met
with them at all?
A.
Three or four times.
Q.
Which lawyers?
A. Mr. Dym, Mr. Duke, Mr. Northrip. I don't
recognize the rest of them. Are they on your side?
Q.
You didn't meet with me before.
A.
No.
MR. ROSENBLATT: Page 85, Line 18.
Q. Do you ever have occasion to read articles on
the issue of smoking and health, let's say in the
Journal of the American Medical Association, the New
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England Journal of Medicine? You are laughing.
You don't want to know about it?
A. I don't want to know. I'll read excerpts my people prepare, but that is not what I put on my number-one reading list.
Q. You do not have anyone designated at TI, for example, if a significant article comes out in a technical journal, or a medical journal, to put it in understandable language for you?
A. Obviously a Surgeon General's Report, I will get an excerpt, what is the meaning.
Q. A couple-page excerpt?
A. Just a memorandum.
MR. ROSENBLATT: Page 87, Line 19.
Q. I'm not asking this question in a wise-guy sense. But I'm asking it in the sense of the tobacco industry's position, has been consistent on the issues of smoking and health for a number of years. Certainly since you are president at TI.
A. On smoking and health?
Q. Yes.
A. Yes. I would say that's true.
MR. ROSENBLATT: Page 90, Line 2.
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Q. As a practical matter, would it be brought to your attention every time a spokesperson for the
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tobacco industry employed by TI is quoted in the newspapers --I mean, a national kind of newspaper, like the New York Times or the Wall Street Journal?
A. I would know because I have clips that usually cover the Wall Street Journal, the Washington Post, and if there is something on the Tobacco Institute, yes, I would see that.
Q. Do you read all of the clips?
A. Skim them.
MR. ROSENBLATT: Page 94, Line 3.
Q. It would seem to me, as an outsider, in order for your media representative people to respond intelligently to media inquiries and public inquiries, they should certainly know what the Council for Tobacco Research does. And yet what I'm hearing from all of the people from TI, everyone acts as though they don't know it exists, or if it exists, you don't know anything about the Council for Tobacco Research. The question is, why is that? Can you give me some insight into that as to why there is not a
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relationship between the two organizations?
A. I don't know why. I really couldn't answer that. I think our spokespersons would use whatever source they felt would advocate their position. I don't know why they would go from one group
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to another group.
Q. Wouldn't you agree that the underlying reason for all of the proposed antitobacco legislation is the

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4 health hazards presented by cigarettes?
5 A. I think a lot of it. The underlying, as you
6 put it --I think a lot of it would have to do with
7 youth. To me anymore, a lot of the tobacco issues are
8 driven by youth issues.
9 Do we advertise? Do we raise taxes to stop
10 young people and other people from smoking?
11 Q. But, of course, that is a health issue. The
12 reason why people don't want kids to start smoking is
13 because it's a health issue?
14 A. Maybe to some people. In my case, I wouldn't
15 say that.
16 I think there are risks, that you wouldn't
17 want to put off those risks. I don't know what is the
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18 reason people would make the decision to smoke or not
19 smoke.
20 MR. ROSENBLATT: I've got on 99.
21 MR. MARTINEZ: 99 was out.
22 MR. ROSENBLATT: 99 is out, Judge?
23 THE COURT: I don't know. Let me take
a
24 look.
25 MR. ROSENBLATT: Yes.

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1 THE COURT: Yes. The whole page.
2 MR. ROSENBLATT: Okay.
3 So Page 101, Line 12.
4 Q. What would --what would it take to convince
5 you that cigarettes cause cancer and other diseases?
6 The Surgeon General's Reports have not convinced you;
7 the many, many studies have not convinced you?
8 What would it take to convince you?
9 A. Me, as a layperson?
10 Q. Right.
11 A. I think all of us would like to know what
12 causes cancer, I guess --the mechanism, what causes
13 it, what sets it up.
14 MR. ROSENBLATT: Page 102, Line 5.
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15 Q. When people say --and quite frankly, I'm
16 only aware of people in the tobacco industry saying -17
when people say it hasn't been proven that cigarette
18 smoking causes cancer, I'm saying: Okay. What would
19 it take to prove it to you?
20 A. To see the cause and effect. Like I'm aware
21 of studies of inhalation where they tried to replicate
22 cancer in smoking, and they haven't been able to do
23 that.
24 MR. ROSENBLATT: Page 104, Line 9.
25 Q. Are you aware of any animal studies where

1 cigarette ingredients have been rubbed on the back of
2 mice, rats, other animals, that have produced tumors?
3 A. Am I aware? I'm aware of the specific
4 studies. I have heard of research in that area that
5 said there was a large concentration of nicotine used.
6 MR. ROSENBLATT: Page 105, Line 1.
7 Q. I'm sure you have seen many advertisements

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8 that talk about low tar, lower tar. To you, do you
9 have an understanding why the cigarette companies would
10 stress that in their advertising? Who cares?
11 What is the difference whether the cigarettes
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12 have 20 milligrams of tar or 2 milligrams of tar?
13 Do you have an appreciation of why that might
14 be?
15 A. No, I don't.
16 MR. ROSENBLATT: Page 106, Line 2.
17 Q. If I mention such phrases as the Scientific
18 Advisory Board or the special projects division of the
19 Council for Tobacco Research, does that have any
20 meaning to you at all?
21 A. No.
22 Q. To your knowledge, are any of the tobacco
23 companies that are members of TI doing independent
24 research on any issues relating to causation?
25 A. I don't know.

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1 MR. ROSENBLATT: Page 107, Line 23.
2 Q. Who takes the minutes of the executive board
3 meetings?
4 A. Stanley Timco, attorney, Covington and
5 Burling.
6 MR. ROSENBLATT: Page 109, Line 2.
7 Q. Who is on the budget committee?
8 A. You mean by name?
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9 Q. By name.
10 A. Harry Steele with Philip Morris; Al Peterson
11 with Lorillard; Anderson with RJR.
12 Q. Who is on the board of directors of TI?
13 A. The board, you mean, by name? Individuals or
14 are you talking about the executive committee or the
15 board?
16 Q. Let me understand the distinction, if any,
17 between the executive committee and the board of
18 directors.
19 Are they one and the same?
20 A. The executive committee obviously are members
21 of the board, but there are board members that are not
22 on the executive committee.
23 MR. ROSENBLATT: Line 24 on Page 109.
24 Q. As opposed to the Class A members?
25 A. Class A members are cigarette manufacturers.

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1 Q. And the executive committee is made up, as I
2 understand it, solely of the presidents and CEOs of the
3 cigarette manufacturers?
4 A. The presidents. Or each company has two
5 members, and they are designated. One may be the
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6 general counsel. One may be the public affairs
7 officer.
8 The other could be Federal relations
9 representative that has changed over time.
10 MR. ROSENBLATT: Page 111, Line 21.

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11 Q. Who is that?
12 A. Jim Johnston was the president of RJR. And
13 B. Ogelsby, who is here in Washington, is a government
14 relations person for RJR.
15 MR. ROSENBLATT: That's it on this deposition
16 of Mr. Chilicote.
17 THE COURT: Okay. Thank you, sir.
18 MR. ROSENBLATT: Should I go ahead with
19 the -20
THE COURT: Let's see. We have one more to
21 go. Do you want to continue on, or do you need a
22 break? Okay. Take a break.
23 (The jury exited the courtroom.)
24 (A brief recess was taken.)
25 THE COURT: Okay. Where are we?
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1 MR. MARTINEZ: Judge, can I address a matter
2 with you? I'm here. We don't need to get close.
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3 THE COURT: Within arm's reach.
4 MR. MARTINEZ: Yes, sir. I don't want to get
5 within arm's reach.
6 THE COURT: Which one?
7 MR. MARTINEZ: Judge, what I wanted to talk
8 to you about is this next deposition, which I believe
9 is of Thomas Lauria.
10 THE COURT: Lauria. Okay.
11 MR. MARTINEZ: As you know, since you have
12 reviewed this, and you will be reviewing --and you've
13 reviewed one other one, the same outline was used in
14 asking the questions. The same basic questions were
15 asked of each of these people, and they got the same
16 answers.
17 They talked about lobbying. They talked
18 about the fact that they do not believe causation has
19 been established. They talked about the fact that TI
20 opposes bans. They discussed ETS at length.
21 They talked about how many calls they get on
22 an average day. They talked about the hierarchy of TI.
23 Your Honor, if these were live witnesses, you
24 couldn't bring four or five witnesses in to say exactly
25 the same thing. We've reached the limit of redundancy.
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Now, Your Honor, when something gets repeated
often enough, it takes a life of its own, and the jury
starts thinking that it has some special significance.
That's why courts do not permit redundant and
repetitious testimony. They don't permit people to
keep testifying as to cumulative evidence, because it
is prejudicial.
And in this instance, it clearly is
prejudicial. It has reached a point --as I say, two
is fine. But four or five saying exactly the same
thing.
You have read these, and you haven't read
every line, obviously, because there were some that
were not objected to, but the testimony is the same in
both of the ones that we have heard and in both of the
ones that we have not yet heard.

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And I would suggest that it is cumulative,
repetitious and has become prejudicial.
THE COURT: Let me see. Chilicote. What did
I do with it?
What was his position?
MR. ROSENBLATT: He was president, Judge.
THE COURT: He was president.
MR. ROSENBLATT: He was president from -
THE COURT: Dawson was an assistant to the

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1 president. And Lauria is -2
MR. ROSENBLATT: No, no. Lauria is the
3 assistant to the -4
THE COURT: Well, so is she.
5 MR. ROSENBLATT: Yes. She is one.
6 MR. MARTINEZ: Vice president.
7 MR. ROSENBLATT: She has a bigger job than
8 Lauria.
9 THE COURT: Right. He was the assistant -10
Lauria was the assistant, but they all did the same
11 thing.
12 MR. ROSENBLATT: That's one of the points.
13 You know, we went over this deposition for
14 close to an hour. Obviously this is -15
THE COURT: I know. That's not -16
MR. ROSENBLATT: This is an afterthought on
17 Mr. Martinez's part. He never mentioned this. He's
18 realizing, as he sits there and listens, he says this
19 hurts and he wants to put a stop to it.
20 Part of our --part of our reasoning is,
21 obviously the Tobacco Institute is the arm, the
22 propaganda arm, the lobbying arm, the public relations
23 arm of all --of all of these companies. It occupies a
24 very, very central position.
25 And for all of these people who are in high
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1 positions, not one of them, you know, really knows
2 anything. That pattern and that party line is very
3 significant on the fraud conspiracy, misrepresentation,
4 because it's our position that it is a deliberate --it
5 is a deliberate distortion of the truth. And this is
6 what they've been selling the public since they were
7 formed in the 1950s.
8 And, you know, Lauria's deposition is not
9 going to take very long. And then there's Walker
10 Merryman, and that's it for the Tobacco Institute.
11 It's not a lot.
12 MR. MARTINEZ: They've also designated
13 Kornegay for the next few days.
14 But, Your Honor, it isn't an afterthought.
15 There are other parts of my body getting numb, and it's
16 from listening to this because it's duplicative and
17 repetitious and unnecessarily prejudicial to my client.
18 MR. ROSENBLATT: It's not unnecessarily
19 prejudicial. It just simply outlines the position of
20 the Tobacco Institute. They're different --Kornegay

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21 served before Chilicote did. And it's obviously part
22 of our case, Judge, to show this pattern, that it's the
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23 same exact situation.
24 And obviously, when someone like Chilicote
25 shows that he has access to President Clinton, he has
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1 access to President Bush, he plays golf with
2 Congressmen, it's all different. It's not all the
3 same. But it presents a picture.
4 And this jury, you know, is entitled to hear
5 the picture, and we're not dwelling on this. Your
6 Honor has cut out large portions of these depositions.
7 We haven't designated that much. And out of
8 our designations, you know, much is out.
9 And this is --this is simply a
10 representative sampling of some of the Tobacco
11 Institute people.
12 THE COURT: Well, I assume they wouldn't have
13 four people in the same job at the same time.
14 MR. ROSENBLATT: They all have --they all
15 have different positions.
16 THE COURT: Different functions.
17 MR. ROSENBLATT: And sometimes you would,
18 Judge.
19 THE COURT: All right.
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20 MR. HEIM: But the question -21
THE COURT: Overrule the objection.
22 MR. HEIM: Your Honor, I have a slightly
23 different issue. I was going to say something about
24 the last, but I'll pass it since Your Honor has ruled.
25 My --while I join with Mr. Martinez because
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1 I do think it's cumulative and the same questions, same
2 answers, and I don't think --I think that it can be
3 prejudicial, that kind of repetition. But I have a
4 different request of Your Honor. That is, I'd ask Your
5 Honor to at least inform this jury that the ETS
6 testimony in this case, because there's been more of it
7 in these last two depositions than we've had at any
8 other part in this case --Your Honor has kept most of
9 it before this --is not part of anything that belongs
10 for their consideration.
11 The reason there's so much of it of course is
12 that these depositions were taken in Broin.
13 THE COURT: In Broin.
14 MR. HEIM: But they've now heard it and they
15 will hear it again in the next two depositions, as
16 well. Positions on ETS and the science of ETS are not
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17 relevant here. And I think the jury should know that.
18 THE COURT: I don't know if there was that
19 much.
20 MR. ROSENBLATT: Very little.
21 MR. HEIM: Well -22
THE COURT: The reason I kept it in is
23 because it was a little difficult to get it out and

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24 make sense of the next question and the follow-ups.
25 And that's where the problem came in.
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1 MR. HEIM: Well, it seemed to me that just
2 listening, as I was, that there was a fair amount of
3 ETS. And however much there is and will be in the next
4 two depositions or three depositions, all in the Broin
5 case, I think the jury ought to know that that's not
6 part of this case. And if they hear about it because
7 it had to do with some other case -8
MR. ROSENBLATT: Well, it is part of the
9 case, to the extent of showing that any time
10 information comes out from any independent scientific
11 source, which is anti the tobacco industry position,
12 the tobacco industry basically says that the science is
13 untrue.
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14 And to that extent --obviously,
15 environmental tobacco smoke is not an issue in this
16 case on the issue of causation or addiction, but it
17 is --and that's why I believe Your Honor has left it
18 in on a very limited basis.
19 They reacted to the --to show that they
20 react to the EPA report on secondhand smoke in
21 precisely the same fashion as they react to the Surgeon
22 General's Reports and other science on secondhand
23 smoking; that their tactics, that their techniques are
24 the same whether you're dealing with active smoking or
25 passive smoke.
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1 So in that sense I think it's relevant.
2 MR. HEIM: Your Honor, I think that argument
3 proves too much because the science of ETS, the level
4 of science and the level of scientific investigation
5 into ETS, as I understand it, is far different and far
6 less, as subsequent events have proven, as it is with
7 tobacco smoke investigations and science generally.
8 So, it's a different level. It's a different
9 thing.
10 THE COURT: I don't think we focused on that.
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11 I don't think it became a focal point of the testimony.
12 MR. HEIM: I mean -13
THE COURT: I'll keep it in mind as we go
14 through this.
15 MR. HEIM: The jury will not know, for
16 example -17
THE COURT: What do you want me to tell them?
18 MR. HEIM: Well, I would simply tell them
19 you'll hear some things in these depositions about
20 environmental tobacco smoke and you should know that
21 that's not part of this case. Environmental tobacco
22 smoke is not part of your case and shouldn't be
23 considered by you.
24 MR. ROSENBLATT: It's our position, Judge,
25 that that kind of instruction is looking for trouble,
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1 because --the simple truth of the matter is that when
2 the time comes, Mr. Heim is going to tell that to the
3 jury. I'm not going to be arguing environmental
4 tobacco smoke.
5 It's a nonissue. And to raise it --to start
6 saying to the jury, well, you know, you've heard this
7 and this is the reason, it's not a good practice. It's
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8 really looking for trouble.
9 THE COURT: I don't think there's been enough
10 mentioned about ETS to create anymore problems.
11 I appreciate your objections. They're
12 overruled.
13 All right. We're going to do Lauria now?
14 MR. ROSENBLATT: Yes, Judge.
15 THE COURT: Okay. Let's bring them out.
16 (The jury entered the courtroom.)
17 THE COURT: Okay. Have a seat.
18 All right. There's one more coming up.
19 MR. ROSENBLATT: This is the deposition of
20 Thomas Lauria, L-A-U-R-I-A, taken in Washington, D.C.
21 November 18, 1993.
22 (The deposition of Thomas Lauria was read as
23 follows:)
24 MR. ROSENBLATT: Beginning on Page 4.
25 Q. Tell me your name, please, and your address.
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1 A. Thomas Lauria. I live at 4141 North
2 Henderson Road in Arlington, Virginia.
3 Q. How far is Arlington from D.C.?
4 A. Just across the Potomac River.
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5 Q. By whom are you employed?
6 A. The Tobacco Institute.
7 Q. In what capacity?
8 A. I'm assistant to the president.
9 Q. How long have you been assistant to the
10 president?
11 A. Since October of 1989.
12 Q. Which president?
13 A. Samuel Chilicote.
14 Q. When did you start with the Tobacco
15 Institute?
16 A. At that time -
-
17 MR. ROSENBLATT: We go to Page 10, Line 18.
18 Q. How does that come about with the Tobacco
19 Institute? You made it known to them you were looking?
20 A. A friend of mine in media made it known to me
21 that a spokesperson position had opened up there, and
I
22 thought it might be interesting. It certainly was
23 worth an interview.
24 Q. Who interviewed you?
25 A. Brennan Dawson.
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1 Q. Did she hire you?
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2 A. Eventually. I had to go through a series of
3 interviews leading up to that.
4 MR. ROSENBLATT: We go to Line 12 on Page 11.
5 Q. What appealed to you about the job,
6 considering your background, your varied background,
7 which seems to me, as an outsider, this was much more
8 constricting than what you had done before, but maybe
9 I'm wrong?
10 A. I think it gave me a chance to participate in
11 public affairs, raise my profile.
12 Q. What does the assistant to the president do
13 with the Tobacco Institute on a daily basis?
14 A. I handle media inquiries and some public
15 inquiries.
16 Q. I took two depositions before you today,
17 Brennan Dawson and Walker Merryman; and my impression
18 is that is what they do as well.
19 A. That's correct.
20 Q. So you all do pretty much the same thing?
21 A. We form the media relations department there.
22 Q. I'm puzzled as to why you have the title
23 "assistant to the president." You must have some
24 relationship to the president that they don't, or maybe
25 not?
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A. Not really.
Q. So why do you have the title?
A. It is what they gave me.
Q. How is it determined whether you or Merryman
or Dawson --NBC calls, some paper out in Peoria calls,
how is it determined whether you take the call, whether
she takes the call, whether Walker Merryman takes the
call, or is it just -
A. On all media, we take the calls. I think on
some --some media, there are personal contacts. Some
reporters like to talk to Walter; some to Brennan; some
to myself.
MR. ROSENBLATT: Page 13, Line 3.
Q. Is that like 90 percent of the job?
A. Yes.
Q. Responding to media inquiries and inquiries
from the public?
A. Yes.
Q. What is the other ten percent of the job?
A. I guess that would be speaking engagements.
Q. Do you have more contact with the president
than Merryman or Dawson?
A. No.
Q. If you wanted to review all of the inquiries
you responded to, let's say in 1993, just wanted to see
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1 who had called you, who you had spoken to, to remind
2 yourself, is that information available to you at the
3 Tobacco Institute?
4 A. Yes. There would be activity reports.
5 Q. In other words, if someone calls, let's say,
6 just an individual, you speak to them, they ask

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a
7 couple questions, you have a seven-or eight-minute
8 conversation, that is documented on an activity report?
9 A. As a number.
10 Q. Well, what do you mean, as a number?
11 A. A call from an average caller would be
12 indicated as a public call from one to how many come in
13 that day.
14 Q. Do you write down or is there a record kept
15 of the name of the individual calling?
16 A. I don't believe there is, no.
17 Q. Do you document any kind of file as to the
18 substance of the conversation?
19 A. No.
20 Q. You've been doing this for a while. If I
21 were to ask you: What do most people --forget the
22 media, for the minute. As to members of the general
23 public, what are the most frequent kinds of questions
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24 you get?
25 A. Concern about taxation and concern about

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1 smoking restrictions.
2 Q. Are you a smoker?
3 A. No, I'm not.
4 Q. Ever?
5 A. I smoked for a day or so when I was
a
6 teenager.
7 MR. ROSENBLATT: I just want to make sure I'm
8 not skipping anything.
9 Page 22, Line 6.
10 Q. Have you ever made an attempt to study the
11 issue of whether or not smoking causes or doesn't cause
12 cancer?
13 A. Not in any discernible detail, no.
14 Q. But in your own mind, as an individual, you
15 are satisfied smoking does cause cancer, to a certain
16 number of people?
17 A. No. I see smoking as something that has been
18 identified by studies as posing a risk factor. It may
19 cause certain health problems.
20 Q. It may cause cancer?
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21 A. That's one of the concerns that are
22 frequently mentioned, yes.
23 Q. And you just don't know? I mean, you have
24 never made an attempt to find out whether it does or it
25 doesn't?

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1 A. I think it is a very well-documented fact
2 that the public understands that cigarette smoking is a
3 risk factor for that.
4 Q. I'm not asking if it is a risk factor. I am
5 asking, is it a well-documented fact that smoking
6 causes cancer in people who smoke a lot, over a period
7 of years?
8 A. I don't think so.
9 MR. ROSENBLATT: Line 23, Page 23.

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10 Q. Have you ever read a Surgeon General's
11 Report?
12 A. Yes, I have. 1986, 1989.
13 Q. Why those two, in particular?
14 A. '86 dealing with environmental tobacco smoke
15 was of particular interest to me, and '89 because it
16 kind of summarized all of the anniversary reports.
17 Q. Why was the environmental tobacco smoke of
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18 particular interest to you?
19 A. It was a budding controversy. As a
20 spokesperson, I wanted to understand what we were
21 talking about.
22 MR. ROSENBLATT: Line 17 on Page 24.
23 Q. Is it your understanding there is any real
24 division of opinion in the scientific community about
25 whether or not cigarette smoking causes cancer or heart

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1 diseases and other diseases?
2 A. I understand that the Federal health agencies
3 are unified in taking a stance against tobacco.
4 Q. What about all of the thousands of studies
5 that have done --that have been done since the '50s on
6 the issue of cigarette smoke causing cancer and other
7 diseases?
8 A. I would imagine those studies would prompt
9 Federal agencies to take actions they have taken.
10 MR. ROSENBLATT: Page 26, Line 5.
11 Q. Are you familiar with the warnings that
12 appear on packages of cigarettes?
13 A. In general, yes.
14 Q. What do the warnings say that mention the
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15 word "cancer"?
16 A. I don't have it committed to memory.
17 Q. What do you think it says? What is the
18 thrust of it when it mentions cancer? What is the
19 warning?
20 A. I don't have it memorized.
21 Q. Does it say that smoking can cause cancer,
22 that it does cause cancer?
23 A. I'm not certain.
24 Q. Big difference from the standpoint of the
25 consumer, wouldn't you think, if the warning said:

1 Cigarette smoking may cause cancer, or it says: It
2 causes cancer?
3 A. I think the risk links to smoking are so
4 universally known, I'm not sure what the impact is on
5 consumers.
6 MR. ROSENBLATT: Page 29, Line 19.
7 Q. What is tar, do you know?
8 A. I don't have a clear scientific definition of
9 what it is.
10 Q. Even an unclear, layman's definition of it?
11 A. I'm not certain.
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12 Q. What do you think the significance is that

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13 you see an ad and it says: The brand has 17 milligrams
14 of tar, this brand has 3 milligrams of tar, is that
15 supposed to mean anything to me, as a consumer, that
16 one is better than the other, one tastes different from
17 the other, or what?
18 A. I don't think it means anything to a
19 nonsmoker. I think perhaps to a smoker, there is a
20 taste differential that is indicated.
21 MR. ROSENBLATT: Line 18, Page 30.
22 Q. Why do they do it? Why do they talk about
23 low tar? Who cares?
24 A. I understand there is a consumer preference
25 for a wide range of both prices and flavor

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1 availabilities.
2 Q. What does low tar have to do with flavor, if
3 anything?
4 A. As a nonsmoker, I don't know. I understand,
5 from smokers, they taste lighter.
6 MR. ROSENBLATT: I have 38, Line 18.
7 Q. What is the Council for Tobacco Research?
8 A. An organization based in New York.
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9 Q. What is it?
10 A. I'm not very familiar with it.
11 Q. Do you know what it does, what it purports to
12 do?
13 A. I understand it funds research.
14 Q. Do you know what kind of research they do?
15 A. Well, I would presume the Council for Tobacco
16 Research would fund tobacco issues. I'm not very
17 familiar with them.
18 Q. Have you ever seen any research report that
19 came out of the Council for Tobacco Research?
20 A. I recall seeing them in our library at the
21 Tobacco Institute.
22 Q. Do you recall what they concluded, what the
23 substance of any of those reports were?
24 A. They were far too technical for me.
I
25 glanced at it and put it back.

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1 Q. Do you know anyone who works for the Council
2 for Tobacco Research?
3 A. No, sir.
4 Q. Have you ever heard of Dr. James Glenn?
5 A. No.
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6 MR. ROSENBLATT: Page 42, Line 6.
7 Q. Can you name one medical doctor, one
8 scientist in the entire United States of America,
9 unconnected with the tobacco industry, who takes the
10 position publicly that it hasn't been proven that
11 cigarette smoking causes cancer and other diseases?
12 A. No. I couldn't give you a specific name,
13 although I am aware there were and are medical
14 professionals who make that claim.
15 Q. Who are they? From what school are they?
16 Who do they work for?

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17 A. As I stated, I couldn't name them.
18 Q. I don't need their name. Tell me, where do
19 you read an article?
20 What are you talking about? Are you telling
21 me someone from a university --you don't have to know
22 his name --who takes the position publicly, who is
23 unconnected with the tobacco industry?
24 MR. ROSENBLATT: Then you go to Line 2 of
25 Page 43.

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1 A. Just in the affirmative. I understand there
2 have been people who have testified well before I
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3 became involved in the industry on these matters.
4 Q. Has anyone said that since 1980?
5 A. I don't know.
6 Q. We know recently there was a smoking ban
7 against smoking in all restaurants in Los Angeles.
8 What did the Tobacco Institute do to try to influence
9 the decision the opposite way?
10 A. I don't know.
11 Q. You weren't involved in that at all?
12 A. That's correct.
13 Q. Now, just so we will be understanding each
14 other, you may not know the details with precision, but
15 are you telling me you are even unaware there were some
16 people employed by the Tobacco Institute who were
17 involved in that issue?
18 A. That's correct.
19 Q. You just don't know?
20 A. I do not know the extent of any involvement
21 with the Tobacco Institute in the most recent -22
Q. What is the reason for the recent
23 reshuffling, and a lot of people were fired, let go, at
24 the Tobacco Institute?
25 A. I understand the reduction in force was

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necessitated by economic considerations.
Q. What does that mean? The member companies
weren't willing to pay the monies to pay the additional
people?
A. I don't know if I could characterize it as
willing. I think there was just less money available
to the Tobacco Institute. That is my understanding.
Q. Who made the decision that these people would
go and these people would stay?
A. I don't know.
Q. Who, other than the president of the Tobacco
Institute, would have the power to make that decision?
A. I don't know the decision-making process that
led to the selection of individuals.
Q. You don't know whether or not the presidents
and chief executive officers of the member companies
had input into that decision?
A. I have no idea.
Q. How did that happen? One day you were at
work and you heard 30 people were being fired or what?
A. An announcement was made on a day when I

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wasn't in the office.
Q. Who made the announcement?
A. I understand it was made by Bill Adams.
Q. You mean, he got on the loud speaker system
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1 or something, or he sent out a memo?
2 A. As was told to me, he visited the offices of
3 those people that were no longer going to be employed.
4 Q. And it all happened on one day, is that your
5 understanding?
6 A. That was my understanding.
7 MR. ROSENBLATT: Line 17, Page 46.
8 Q. Do you know that according to the Centers for
9 Disease Control, approximately 90 percent of lung
10 cancer victims are smokers?
11 A. I'm not familiar with that statistic.
12 Q. Assuming that statistic to be true, do you
13 think that's a coincidence?
14 A. I don't assume it to be true. I don't know.
15 MR. ROSENBLATT: Page 47, Line 12.
16 Q. What percentage of lung cancer victims do you
17 think are smokers?
18 A. I don't know if any are.
19 MR. MARTINEZ: It continues on Page 48,
20 Line -21
MR. ROSENBLATT: Line 4. Continue your
22 answer on Line 4, Page 48.
23 A. I established I'm not a scientist, and I'm
24 not in a position to come to those kind of conclusions.
25 Percentages are far beyond my expertise.
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1 Q. Without being a scientist and without being a
2 medical doctor, do you think the majority of people who
3 die from lung cancer are smokers or nonsmokers?
4 A. I don't know.
5 MR. ROSENBLATT: And we go to Line 24 on Page
6 48.
7 Q. How does a man and woman on the street who
8 are not scientists or doctors, who keep hearing from
9 you people that it hasn't been proven that smoking
10 causes cancer, how do they know? They are not
11 scientists or doctors either.
12 A. I can't speak for everyone else.
13 Q. Can you speak for anyone else?
14 A. I don't know.
15 MR. ROSENBLATT: Page 55, Line 15.
16 Q. I'm saying, what is the reason that the
17 Surgeon Generals have uniformly and unanimously come
18 out against tobacco?
19 A. I interpret the Surgeon Generals, the office
20 of the Surgeon General as, after looking at studies
21 that have statistically linked cigarette smoking as a
22 risk factor for emphysema, lung cancer and heart
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23 condition, concluding that the public needs to be
24 informed about that.

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25 Q. And your job is to shoot holes in that and

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1 say it really hasn't been proven; it is a statistical
2 linkage; there is no cause and effect. That's your
3 accomplishment?
4 A. No.
5 MR. ROSENBLATT: Page 59, Line 8.
6 Q. Do you ever testify on Capitol Hill?
7 A. No. I have never testified.
8 Q. Before any congressional committee, either
9 House or Senate?
10 A. That is correct. I have never testified.
11 Q. Who does the Tobacco Institute usually send
12 to do that?
13 A. Former Congressman Whitley frequently
14 testifies for us. Not exclusively, but frequently.
15 Q. Who else testifies for you?
16 A. It would depend on the issue.
17 Q. Well, who else would testify for you?
18 A. Economists, people.
19 Q. I mean, from the Tobacco Institute, who else
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20 would testify for you?
21 A. In my time, there is no one else in the
22 Tobacco Institute that has testified.
23 Q. Only Whitley?
24 A. To the best of my knowledge.
25 MR. ROSENBLATT: Page 63, Line 10.

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1 Q. What is the meaning of the title "assistant
2 to the president"? Obviously, you are not the
3 assistant to the president.
4 A. Inasmuch as I answer press inquiries on his
5 behalf, we perceive that as assisting the president.
6 Q. In that sense, everyone assists the
7 president.
8 Is there anything unique about what you do to
9 give you that title?
10 A. Not in terms of my relationship with the
11 president of TI.
12 Q. Does the president of TI smoke?
13 A. I don't know.
14 Q. Think. I assume you've seen him. You know.
15 A. I don't know if he smokes cigarettes.
I
16 vaguely recall he may smoke cigars. I'm really not
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17 certain.
18 Q. You have no recollection of ever seeing him
19 with a cigarette?
20 A. Exactly.
21 MR. ROSENBLATT: Page 66, Line 19.
22 Q. Who is your immediate supervisor?
23 A. Brennan Dawson.
24 Q. How many vice presidents are there at the
25 Tobacco Institute?

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1 A. Approximately a dozen. I might be off.

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2 MR. ROSENBLATT: Page 73, Line 3.
3 Q. What did you do to prepare for this
4 deposition? Did you meet with lawyers?
5 A. I met with counsel.
6 Q. When?
7 A. On three occasions.
8 Q. How many counsel?
9 A. How many lawyers?
10 Q. Yes. How many lawyers?
11 A. Usually three.
12 Q. Who are the lawyers you met with?
13 A. From Covington.
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14 Q. Give me the names.
15 A. Bob, Paul, Herb.
16 Q. Bob, Paul, Herb?
17 A. Yes.
18 Q. How long did you meet each time?
19 A. A couple hours.
20 Q. When were these meetings?
21 A. Over the last couple weeks, I guess.
22 THE COURT: That's it.
23 MR. ROSENBLATT: That's it.
24 THE COURT: Okay. Conference time.
25 (Discussion off the record.)
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1 THE COURT: All right. We've been discussing
2 our time frame and scheduling and all that sort of
3 business. That's my homework. And then after I do it,
4 I've got to go talk with them and go through it.
5 And so we're going to release you now so we
6 can get some of this work done. Get you back here
7 tomorrow at 10:00 --10:00 in the morning.
8 We're going to meet, the lawyers and I,
9 earlier than that. We're going to meet around 8:30,
10 quarter to 9:00; go through some of this stuff.
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11 Hopefully we'll be through with what we have to do by
12 the time you come in at 10:00.
13 We'll take this hour to do it tomorrow
14 morning and see what we can get done, if that doesn't
15 upset you at all. I've got to keep you happy.
16 (The jury exited the courtroom.)
17 THE COURT: We have three jurors that have
18 something to do Friday, doctors and appointments, and
19 so forth. I said Friday is fine, so they can schedule
20 their appointments for Friday and it won't interfere
21 with our plans. That's good.
22 Okay. Where are we at? We've got to go
23 through Merryman, is that it?
24 MR. HEIM: Yes. Which one are we doing,
25 Merryman?
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1 MR. MARTINEZ: That's fine, Judge.
2 THE COURT: Okay.
3 MR. MARTINEZ: Judge, before we start on the
4 specifics of Mr. Merryman's deposition, I would invite
5 your attention most respectfully to Page 11, Line 23 of
6 Mr. Lauria's deposition, where Mr. Rosenblatt said: I

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7 took two depositions before you today, Brennan Dawson
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8 and Walker Merryman; and my impression is that is what
9 they do as well.
10 That's correct.
11 So you all do pretty much the same thing?
12 We form the media relations department there.
13 And then he proceeds to spend the rest of the
14 page proving that his job is virtually identical to
15 Brennan Dawson and Walker Merryman.
16 The next deposition we have up is that of
17 Walker Merryman. So I would submit that that is even
18 further evidence --and as we go through the
19 deposition, it will be very clear that there are
20 specific questions that are, again, repeated for the
21 third time today.
22 MR. ROSENBLATT: That's how one establishes
23 conflicts and credibility. And it's the position of
24 the plaintiffs, Judge, that the Tobacco Institute, as
25 it relates to the media and the public, is a total

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1 sham.
2 And by establishing --and Merryman is in a
3 much different position than Lauria, because he's been
4 with the Tobacco Institute for many, many years, and
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5 when you --even remembering our very first witness in
6 this case, Dr. Julius Richmond, said that he debated
7 several times on national television programs Walker
8 Merryman, whereas Lauria has never appeared on
9 television. Lauria has never testified to any
10 congressional committees.
11 And Walker Merryman has been a much more
12 active, seasoned, elder spokesman for the tobacco
13 industry.
14 MR. MARTINEZ: So maybe they should have
15 picked -
-
16 MR. ROSENBLATT: And in many -
-
17 MR. MARTINEZ: I'm sorry.
18 MR. ROSENBLATT: In many instances I'm asking
19 the same questions to establish the fact that none of
20 these people know anything. They don't read anything.
21 They don't know anything about the Tobacco Institute.
22 They don't know anything about Surgeon General's
23 Reports.
24 All they know is to repeat the big lie, that
25 it hasn't been scientifically proven that our product

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1 causes cancer. And it's very important in terms of
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2 the --that's one of the basic frauds of the tobacco
3 industry. They just repeat over and over again this
4 line.
5 And when you ask them: Name me a doctor who
6 agrees with you, they say: Oh, wasn't there --wasn't
7 there testimony 10, 15 years ago?

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8 Boom. They never come up with a name. They
9 never come up with a name.
10 And obviously on cross-examination, where are
11 these people? I mean, obviously that would make a
12 wonderful witness for the tobacco industry in this
13 case, someone from a prestigious university who agreed
14 with their position. Apparently they can't find one,
15 and it's very important for us to establish that.
16 MR. MARTINEZ: At the risk of getting bogged
17 down into a circuitus argument that has nothing do with
18 what we're talking about, what we're talking about,
19 maybe he should have picked Walter Merryman as the
20 person that he was going to bring in here to say: How
21 do you respond to antitobacco articles, or how do you
22 respond to questions?
23 He's already had three people come in and
24 testify about that. He's already asked --the only
25 difference between Walker Merryman and the other two

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people is that Walker Merryman is a vice president.
And he asks specifically: When you became vice
president, did that change your duties in any way? And
he said no.
So, all he's doing is exactly the same thing,
dealing with requests and information and answering
them and saying the same thing.
I would expect he could get all 30 people
from the Tobacco Institute to come in and say the same
thing, if he wanted all 30 of them, but I don't think
the Court would permit them to do so.
And if these people were being called as live
witnesses, you would have never permitted all of them
to come in to testify to the same things.
If he wants to pull out the few things that
are different, then we're talking about a different
animal. This is not what we're doing here.
He wants to ask him all of the same
questions, because he believes that the way that he
asks questions is going to convince this jury that what
they're doing is improper. And that's not the proper
way to do it.
THE COURT: Well, the answers are somewhat
different. He's much more informed than the others.
MR. ROSENBLATT: Yes. He's been there since
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1 '76.
2 MR. MARTINEZ: They should have called him
3 first, Judge. I'd say this is now very cumulative. I
4 will point out the specific cumulative nature of the
5 things as we go through the testimony.
6 THE COURT: All right. We'll go through it,
7 and you can point it out.
8 Page 4, 22 to 25, no objection.
9 5, Line 1 through 5, no objection.
10 18 through 25, no objection.
11 6, 1 through 13, no objection.
12 Page 9, 24 and 25, no objection.

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13 Page 10, 1 through 13, no objection.
14 Page 10, 22 through 25.
15 MR. MARTINEZ: Your Honor, at that point
I
16 would like to inject an objection to cumulative because
17 that is exactly the same question and exactly the same
18 answer that has been given both by two prior witnesses.
19 What is an average day?
20 A great deal of my time is responding to
21 telephone calls from reporters who have inquiries on
a
22 wide variety of subjects.
23 You personally do that?
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24 Yes, I do.
25 That's what all of them have said they do.

1 THE COURT: Overruled.
2 Page 11, 1 through 4, and 20 through 25,
3 overruled.
4 MR. MARTINEZ: Again, Your Honor, that is
5 exactly what was told by the other people when they had
6 that sort of thing. It would be typical for us not to
7 respond. We will get guidance, and we'll attempt to
8 respond.
9 Then the question on Page 7 has been asked of
10 each of them. They've gotten the identical answer from
11 each of the prior witnesses.
12 Who would you get the guidance from? Is
13 there an inhouse scientific person?
14 Guess what? There still isn't an inhouse
15 scientific person at the Tobacco Institute, and the
16 answer is the same on every single one of them:
17 No, there is not.
18 Others have been asked and have said a
19 consultant would read it and sometimes give us some
20 input.
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21 This is on Page --I'm sorry; it's covered
22 up --Page 12 is exactly the same testimony that's been
23 given by two prior witnesses. It is cumulative.
24 THE COURT: Overruled, Page 12, 1 through 22.
25 We go to Page 26 -25,
actually.

1 26.
2 MR. MARTINEZ: Your Honor, that is exactly
3 the same hypothetical question that was asked of all of
4 the other ones. A reporter calls you and asks you if
5 the warning is true.
6 Now, I would submit that it not only has to
7 do with the repetitious and cumulative nature of it, it
8 further has to do with preemption.
9 THE COURT: Overruled.
10 Page 26, 3 through 25.
11 MR. MARTINEZ: And, Your Honor, the same
12 objection on Page 27.
13 THE COURT: Page 27, 1 through 25, overruled.

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14 MR. MARTINEZ: Specifically on Line 18, where
15 the question is: Your bottom line answer to whether or
16 not cigarette smoking causes cancer would be you don't
17 know whether it does or it doesn't? That is exactly
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18 the same answer that's been given each time.
19 THE COURT: Overruled.
20 Page 28, 1 through 25, overruled.
21 29, 1 through 25, overruled.
22 Page 30, 1 through 19, overruled.
23 MR. MARTINEZ: Again, he's asked if he knows
24 Dr. James Glenn on Page 49. None of them know
25 Dr. James Glenn, surprisingly enough, but that is
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1 clearly repetitious.
2 THE COURT: 31, Line -3
MR. MARTINEZ: Again -4
THE COURT: 3 through 25.
5 MR. MARTINEZ: Lines 18 through 23, in
6 particular, specifically state they do not know what
7 kind of research CTR does; none of them do. And I
8 think that --again, cumulative and repetitious.
9 THE COURT: Overruled.
10 32, overruled, 2 through 25.
11 33, top of the page, 1 through 3.
12 MR. MARTINEZ: That is further, Your Honor,
13 argumentative. I don't think he should be permitted in
14 court here to be asking a question:
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15 It may or may not be responsible for either
16 zillions of death or for zero deaths; you just don't
17 know?
18 That is clearly an improper question, and the
19 objection was made to it.
20 THE COURT: Overruled.
21 Page 33, Line 21.
22 MR. MARTINEZ: Your Honor, at the bottom of
23 Page 33, Question 24, 25, that --he has been asked
24 that question before. He has answered that question
25 before. It is repetitious within this deposition;
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1 never mind he's asked the question of three other
2 people.
3 He has clearly already answered that
4 question, and what he is doing with this is he's
5 arguing with him. He's not asking him a question for
6 information.
7 THE COURT: Overruled. He answers the
8 question on Page 34, a long answer.
9 MR. MARTINEZ: And on the bottom of 34, 35,
10 Your Honor, he is again taking the position that TI's
11 position provides a smoker with perfect
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12 rationalizations to continue to smoke by saying
13 causation is not proven. That is, in our view, a
14 violation of the preemption policy. It is also
15 cumulative, in that he has asked each of them exactly
16 the same question.

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17 Actually, it's not even a question. He's
18 made the same speech to each of the other two witnesses
19 that causation --that this is a rationalization to
20 smokers, their position.
21 THE COURT: Overrule the objection.
22 36, overruled.
23 37.
24 MR. MARTINEZ: Again, he asks if he thinks
25 that anyone who really wants to smoke, make up their

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1 mind and quit.
2 THE COURT: All right.
3 MR. MARTINEZ: It's cumulative. He's now the
4 third person who is asked that opinion.
5 THE COURT: Overruled.
6 38, 6 through 21, no objection.
7 MR. MARTINEZ: There is no objection, but I
8 would point out that it is his job responsibilities,
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9 which show that his job responsibilities are identical
10 to the two people who have already testified. I'm not
11 objecting to it; I'm just pointing it out to you.
12 THE COURT: Page 39, 1 through 6, overruled.
13 Page 40, 22, 25, no objection.
14 MR. MARTINEZ: No, sir.
15 THE COURT: 41, 1 through 4, no objection.
16 5 through 23, overruled.
17 Page 43, Line 12 through 25, sustained.
18 Although you didn't object, but I assume you did.
19 MR. MARTINEZ: Yes, Your Honor. There was an
20 objection. I apologize if it wasn't marked.
21 THE COURT: 44, 1 through 19, sustained.
22 46, 15 through 19, overruled.
23 MR. MARTINEZ: The cumulative nature of the
24 contributions.
25 THE COURT: 49, no objection, 15 through 22.

1 51.
2 MR. MARTINEZ: Again, cumulative. Very clear
3 that they have and do oppose that, and their
4 explanation has all been the same.
5 THE COURT: All right. Overrule the
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6 objection, 17 through 25, Page 51, and Line 1 through 9
7 on 52.
8 56, Line 8 through 25.
9 MR. MARTINEZ: Again, repetitive nature. He
10 has asked this question of all of their witnesses.
11 They are not scientists, and they've all seemed to have
12 given him the same basic answer.
13 THE COURT: All right. Overruled, 56, 8
14 through 25, and 57, 1 through 23.
15 MR. MARTINEZ: Your Honor, I would also on 57
16 mention preemption, particularly with reference to the
17 last speech disguised as a question, talking about low
18 tar and what is in the advertisement, because the
19 advertisements do comply with Federal laws.
20 THE COURT: Overruled.

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21 58, 1 through 4, overruled.
22 5 through 25 is sustained.
23 59, Line 1 is sustained.
24 Let's see. 1 and 2.
25 8 through 11 is repetitious. I agree with
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1 you. Sustained.
2 64, 13 through 25, overruled.
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3 65, 1 through 10, overruled.
4 66, 7 through 25, no objection.
5 67, 1 through 20, no objection.
6 21 through 25 --we're getting, again, into
7 this environmental ETS thing. I'm trying to figure out
8 the best place to cut it.
9 MR. ROSENBLATT: But it just shows on
10 substance their position always is: We don't know. We
11 don't know.
12 MR. HEIM: The science is different on these
13 two subjects, and it's not a fair comparison, and it's
14 not in this case.
15 THE COURT: Yes. I realize that, but --all
16 right. 67 is okay, 21 through 25.
17 68, 1 through 8 is overruled.
18 What's this brochure?
19 MR. MARTINEZ: Don't know, Judge. I assume
20 there was a brochure they were looking at, but it has
21 not been marked.
22 THE COURT: What are you talking about here,
23 this brochure? On Page 6 -24
MR. ROSENBLATT: Yes. I'm trying to refresh
25 my recollection.
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MR. HEIM: Your Honor, what did you do with
68, 1 through 8?
THE COURT: Overruled.
MR. ROSENBLATT: We'll withdraw that, Judge.
THE COURT: Okay. Well, if you withdraw
that, which is from 9 to 17, then 18 asks about the
brochure again, and you withdraw all of that, too?
MR. ROSENBLATT: Yes.
THE COURT: Okay. So, 9 through 25 on Page
68 is withdrawn.
69, where are we going with that?
MR. ROSENBLATT: We'll withdraw 69, even
though it's not objected to.
THE COURT: 69, withdrawn.
Page 70, 24 and 25, ETS again.
71, 1 through 7, sustained.
8 through --let's see. I really didn't want
to get into banning smoking on planes. All right.
through 25 is sustained.
72, 1 through 13, sustained.
14 through 25, sustained. I don't want to
get into ETS.
And on 73, 1 through 5, sustained.
MR. MARTINEZ: Sustained, Judge, is that what
you said?

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THE COURT: Yes. Sustained.
What are you going to do about your
counterdesignation?
MR. MARTINEZ: We withdraw that, Your Honor.
THE COURT: Page 73, 10 through 25,
withdrawn.
74, 15 through 17, the answer on 20,
sustained.
75, 2 through 5, sustained.
75, 9 through 20, overruled.
MR. MARTINEZ: Your Honor, Mr. Reid wanted to
address the Joe Camel discussion on this particular
page, if he could.
THE COURT: What about it?
MR. REID: Well, I think it's repetitive from
an earlier deposition today, Your Honor. It also deals
with issues relating to youth marketing, and this
wasn't brought up to the next hurdle on that.
Therefore, in effect, he's giving an opinion
about what he thinks about a particular piece of
advertisement. It's being very specific here instead
of a generic statement.
MR. MARTINEZ: Although counsel can say he's
not focusing on this, this is now the second or third
time that they've specifically discussed Joe Camel
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today.
MR. REID: Also, he's talking about --he's
speculating about what somebody might think about when
they see the ad as they're driving by. What would you
say to somebody, and how would you respond to somebody?
It's getting to be very precise testimony, which is
purely speculative, as well as cumulative.
And I know there's the issue we've been
dealing with about youth marketing; and I think perhaps
there's been enough, that we should go on to another
subject, and we've finally got that resolved since it
is cumulative
MR. ROSENBLATT: The media has many times
dealt with the Joe Camel ads, and this is -15
THE COURT: It really doesn't say anything
other than the fact that the billboard is on there and
anybody passing by can see it, including little kids
and old people.
MR. REID: When you look at Page 77, Judge -20
THE COURT: I'm on 75.
MR. REID: I'm looking at the whole section
about this.
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THE COURT: Well, I don't have any problem
with 75, 8 through 20, and 76, 1 through 17.
18 through 25 on Page 76 is out, as well as
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Page 77, 1 through 11.

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2 MR. REID: Thank you, Your Honor.
3 THE COURT: Okay. Is that it?
4 MR. ROSENBLATT: No.
5 MR. MARTINEZ: No, Your Honor. There is Page
6 81.
7 THE COURT: 81.
8 MR. ROSENBLATT: 81.
9 THE COURT: 81, Line 4 through 25, I said is
10 repetitious, as is 82, as is 83. Well, not
11 repetitious, but it's an inappropriate question, in my
12 opinion.
13 So 83, 1 through 7 is out.
14 MR. MARTINEZ: Your Honor, the next one, I
15 believe is on Page 91 --90.
16 THE COURT: Okay. Page 90, Line 23, 24 and
17 25, overruled.
18 91, Line 1, 2 and 3, overruled.
19 Line 7 through 10, sustained.
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20 MR. ROSENBLATT: You're talking Page 91,
21 Judge?
22 THE COURT: Yes. Page 91.
23 And I said the others were okay. 14 through
24 25, overruled.
25 And 92, 1 through 24, overruled.

1 MR. MARTINEZ: I'm sorry. I couldn't hear
2 you.
3 THE COURT: Overruled.
4 MR. MARTINEZ: That's it.
5 THE COURT: That's it? Okay. So we'll start
6 with that.
7 MR. ROSENBLATT: And we're meeting at quarter
8 of 9:00?
9 MR. MARTINEZ: To discuss the others that
10 you've brought up already.
11 THE COURT: Okay.
12 MR. HEIM: Judge, just so I'm sure what we're
13 working on tonight, would you tell me which depositions
14 you have up there?
15 THE COURT: I don't know which one I'll work
16 on, to tell you the truth.
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17 I've got Merlo. I've got two copies of
18 Rosenbaum. I don't know why.
19 And I've got --which one is this -Fulford,
20 and two copies of Orlowsky.
21 MR. HEIM: Orlowsky.
22 MR. REID: Judge, I think our copy of
23 Rosenbaum was marked up after lunch today, so that
24 includes the latest.
25 THE COURT: Which one is your copy?

1 MR. REID: Let me look at it, and I can tell
2 you. Mine is the one that's not bound.
3 THE COURT: All right. So this should be the
4 working copy?
5 MR. REID: Yes. Right.

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6 THE COURT: Let me see the other one. Is
7 that theirs?
8 MR. REID: I assume it was. I was going to
9 give it back to them.
10 THE COURT: Okay. So -11
MR. REID: I believe that's that.
12 THE COURT: This would be all right. We can
13 do the Rosenbaum because that one seems to be agreed
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14 to.
15 MS. LUTHER: Except I still have to look at
16 it.
17 THE COURT: You haven't looked at it?
18 MS. LUTHER: Right.
19 THE COURT: Do you want to look at it?
20 MS. LUTHER: I looked at what Mr. -21
THE COURT: But you haven't looked at this
22 one, so you don't know what's in here?
23 MS. LUTHER: I have looked at what Mr. Reid
24 gave to you, but I have to go out and figure out what
25 the new designations from the plaintiffs this morning
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1 are and see if I have any counterdesignations.
2 MR. REID: I would say go ahead and read
3 that, though, and we can add hers in the morning. I
4 won't suspect there will be a lot.
5 MS. LUTHER: From what I can see, I agreed
6 with everything in there that Mr. Reid gave you.
7 THE COURT: As a counterdesignation?
8 MS. LUTHER: As counterdesignations and
9 objections.
10 THE COURT: Great. Who is Rosenbaum?
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11 MS. LUTHER: He was --I don't know if he
12 still is --a director and officer of Brooke Group.
13 THE COURT: Okay. I think you're going to
14 run into a problem with the Brooke and Liggett people
15 and all this business.
16 That's sort of a separate issue here now. A
17 lot of the thrust of what I've read so far in those was
18 the fact that although LeBow came in and did testify,
19 he changed his mind and put the label of addiction on
20 the label, and we go through that again with these
21 people here, and I'm not sure whether we're breaking
22 ground here or not.
23 I really would like you to think about that
24 over the night. I'll read it and we'll see where we go
25 with it.
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1 MR. ROSENBLATT: Okay.
2 MR. REID: It's very short.
3 THE COURT: Merlo is with Philip Morris.
4 MR. HEIM: And I think that one is probably
5 ready to go. I don't think there's any additional
6 designations on Merlo.
7 THE COURT: Yes. All right. Let's see.
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8 That's only 200 pages. 220.

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9 MR. NEWSOM: Your Honor, the reason you have
10 two copies of Orlowsky is I gave you a second one that
11 had crossdesignations.
12 THE COURT: I had a little problem
13 understanding that. Let me see if I --I have one that
14 has yellow and orange and blue and green and pink.
15 MR. NEWSOM: Right.
16 THE COURT: Okay. So from what I can see,
17 almost everything that they designate is objected to.
18 Almost everything.
19 MR. NEWSOM: Quite a lot of it.
20 THE COURT: It's almost everything.
21 So that would be complete, right?
22 MR. NEWSOM: It's complete except for the
23 crossdesignations we received this morning. We think
24 some of them are not proper crossdesignations.
25 THE COURT: Those are the things you still

1 have to talk about?
2 MR. NEWSOM: We haven't objected to the
3 pinks.
4 THE COURT: Not all of them, just some of
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5 them?
6 MR. NEWSOM: On the pinks, there are only
7 five of those.
8 THE COURT: Okay. Is there anything else
9 that has to be added to those?
10 MR. NEWSOM: No. Just our objection to the
11 pink ones, which we'll give you in the morning.
12 THE COURT: All right. That's no problem.
13 All right.
14 MR. HEIM: Your Honor, just one other thing.
15 I think Your Honor had said that Friday is
16 going to be a workday, as it has been in the past.
17 THE COURT: Yes.
18 MR. HEIM: To make that go a little better,
19 from our point of view, if we're going to work off a
20 subset of the documents that we had from last Friday,
21 it would be helpful to get that list, you know,
22 tomorrow so we can start pulling the documents.
23 THE COURT: Yes. Tomorrow.
24 MR. HEIM: Yes. Tomorrow is Wednesday. If
25 we could get the list tomorrow, we can start pulling

1 them and get prepared.
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2 So, I mean, if plaintiffs are simply going to
3 work off the same list, it would be helpful to know
4 that, or if we're going to have a different list, it
5 would be helpful to know that, too.
6 MR. ROSENBLATT: We brought Cliff Douglas in.
7 We talked to him over the weekend. He's going through
8 documents today. So when I go back to the office
9 I'll -10
THE COURT: Who is -11
MR. ROSENBLATT: Cliff Douglas, who is, you
12 know, the reader. But that's the main purpose he's
13 here. He's working back in the office going through

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14 documents.
15 THE COURT: Okay. You indicated that you
16 might cut the list down, too, because there's only a
17 little bit of the amount of stuff that's set aside for
18 the privileged documents.
19 MR. ROSENBLATT: Right.
20 MR. HEIM: I guess my point was, we started
21 out, if Your Honor remembers, we had 700 documents and
22 then counsel cut it back and we did the first two -23
actually we did 70 documents.
24 THE COURT: Yes.
25 MR. HEIM: Which is about what we're able to
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get through in a day.
So if we can get --if the next 70 are from
the list that we had last week that we didn't get to,
just simply tell us that and then we know exactly what
we're doing. If it's going to be a different list -THE
COURT: If you're picking and choosing
and clipping, you have to know which of the 70 or which
of the numbers are in or out.
MR. HEIM: Right.
THE COURT: We have to try and do that.
MR. HEIM: So if we can learn that tomorrow,
that would be helpful.
MR. ROSENBLATT: I'll do my best.
THE COURT: I sit here and I marvel at the
amount of work that needs to be done by both sides,
putting this together in short order.
MR. REID: What time are we starting in the
morning?
THE COURT: Quarter of 9:00.
MR. REID: You want Mr. Chumbley here?
THE COURT: Yes. We forgot about
Mr. Chumbley.
MR. REID: He'll be here at 8:45.
THE COURT: That shouldn't really be too
long. From what I understand, you're just talking
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1 about the blocks and slices?
2 MR. ROSENBLATT: Yes. There is an issue over
3 the originals.
4 THE COURT: Yes. I think that's easy to
5 resolve.
6 MR. REID: Good night, Judge.
7 THE COURT: Such a pleasure.
8 (Court was adjourned at 4:25 p.m.)
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